



The Speaker of the National Assembly: Ways to strengthen and enhance the independence of the Speaker's office.

Word Count: 23 260

Wesley Graham (GRHWES001)

Thesis presented for the degree of:

Master of Laws

In the Department of Public Law, Faculty of Law

UNIVERSITY OF CAPE TOWN

Supervisor: Mr Hugh Corder

January 2016

The copyright of this thesis vests in the author. No quotation from it or information derived from it is to be published without full acknowledgement of the source. The thesis is to be used for private study or non-commercial research purposes only.

Published by the University of Cape Town (UCT) in terms of the non-exclusive license granted to UCT by the author.

## **DECLARATION**

**Research dissertation/ research paper presented for the approval of Senate in fulfilment of part of the requirements for the in approved courses and a minor dissertation/ research paper. The other part of the requirement for this qualification was the completion of a programme of courses.**

**I hereby declare that I have read and understood the regulations governing the submission of dissertations/ research papers, including those relating to length and plagiarism, as contained in the rules of this University, and that this dissertation/ research paper conforms to those regulations.**

Signed at Cape Town on this the 12<sup>th</sup> day of January 2016

Wesley Graham

## **ACKNOWLEDGEMENTS**

I would like to take this opportunity to thank my parents for their constant support for the duration of my studies, not only at LLM level but also throughout my LLB degree. I am truly blessed to have such a solid support structure at home, and for this I am forever indebted to you guys. Secondly, I would like to thank my girlfriend, Ashleigh, for her unconditional support whilst completing my LLM. I love you! Furthermore, I would like to take this opportunity to thank Kelly and Jono for assisting me at various stages whilst completing this minor dissertation. Kelly, your constant support was incredible and I thank you for putting up with me as well as assisting me wherever possible. Finally, I would like to thank Professor Hugh Corder for his guidance throughout the drafting process. Prof, it was a humbling experience working alongside you and one that I will never forget!

## **Table of Contents**

CHAPTER ONE .....	1
1.1 INTRODUCTION .....	1
1.2 TRANSITION TO DEMOCRACY .....	3
1.3 THE LEGISLATURE IN TERMS OF THE CONSTITUTION .....	8
1.4 EVOLUTION OF THE SPEAKERSHIP .....	10
1.5 THE INTENTION OF THE PAPER.....	14
CHAPTER TWO .....	16
2.1 INTRODUCTION .....	16
2.2 ELECTION PROCEDURE .....	16
2.3 THE ROLE OF THE SPEAKER .....	17
2.4 FUNCTIONS OF THE SPEAKER.....	18
2.5 THE DUTY TO ACT “FAIRLY AND IMPARTIALLY” .....	23
2.6 CONCLUSION.....	25
CHAPTER THREE .....	26
3.1 INTRODUCTION .....	26
3.2 THE IMPACT OF A DOMINANT PARTY ON THE OFFICE OF THE SPEAKER .....	27
3.3 IMPARTIALITY AND FAIRNESS .....	36
3.4 RULES SURROUNDING THE SPEAKERSHIP .....	41
CHAPTER FOUR .....	50
4.1 INTRODUCTION .....	50
4.2 A COMPROMISED SOLUTION .....	50
4.3 MAKING THE SPEAKER IMMUNE TO THE ‘ANTI-DEFECTION’ CLAUSE .....	52
4.4 SPEAKER ELECTION PROCEDURE.....	54
4.5 SPEAKER AND DEPUTY SPEAKER .....	58
4.6 REMOVE SPEAKER FROM MOTION OF NO CONFIDENCE PROCEEDINGS .....	61
CHAPTER FIVE CONCLUDING REMARKS .....	64
BIBLIOGRAPHY .....	68

## CHAPTER ONE

**‘The office of the Speaker is one of great prestige and dignity... an author writing at the turn of the century saw in it many of the attributes of royalty’<sup>1</sup>**

### 1.1 Introduction

The last decade of the twentieth century has been described by Huntington as the ‘Decade of Democracy.’<sup>2</sup> During the early 1970’s the democratic archetype seemed to be more attractive than authoritarianism, roughly thirty countries shifted from the latter model to the former. The central theme in democracy involves the selection of leaders or top decision makers through a competitive election process.<sup>3</sup> Legislatures are important cogs located within the democratic engine and according to Fish, ‘the presence of a powerful legislature is an unmixed blessing for democratization.’<sup>4</sup> In the case of South Africa, the Constitution of the Republic of South Africa, 1996 (“the Constitution”) confers upon Parliament the legislative authority of the national sphere of government.<sup>5</sup>

According to the Oxford Dictionary, the word ‘Parliament’ is defined (in the United Kingdom) as ‘the highest legislature, consisting of the Sovereign, the House of Lords, and the House of Commons.’ The Oxford dictionary goes on to provide that a ‘Parliament is a legislature similar to the United Kingdom Parliament in other nations and states.’<sup>6</sup> Furthermore, the Oxford Dictionary states that the word ‘legislature’ means ‘the legislative body of a country or

---

<sup>1</sup> Laundry P “*The Office of Speaker in the Parliaments of the Commonwealth*” 1984 at page 66.

<sup>2</sup> Robinson WH “*Parliamentary libraries and information services of Asia and the Pacific: papers prepared for the 62nd IFLA Conference, Beijing, China*” 1997 cited in “*Parliamentary information sources, systems and services in South Africa and the role of Parliamentary libraries in information provision*” 2004 University of Zululand, South Africa at page 1.

<sup>3</sup> Huntington SP “*The Third Wave Democratization in the Late Twentieth Century*” 1991 University of Oklahoma Press at page 6.

<sup>4</sup> Fish S “*Stronger Legislatures, Stronger Democracies*” 2006 Journal of Democracy, Volume 17 at page 5.

<sup>5</sup> Section 43(a) of the Constitution.

<sup>6</sup> Concise Oxford Dictionary, 2015 Oxford University Press.

state' and the same dictionary defines the word 'legislative' to mean 'having the power to make laws.'<sup>7</sup> Although there is a universally accepted definition of the word 'Parliament', there is no universally accepted parliamentary model as the role and functions of a particular institution are largely dependent on the historical circumstances of a particular State. Johnson acknowledges that academics are largely in agreement that Parliaments found in democratic states share three common functions: representation, lawmaking and oversight.<sup>8</sup>

Recently in South Africa, Parliament has been the recipient of extensive scrutiny. Some academics have gone as far as to say that Parliament is a 'weak' institution as a result of, *inter alia* executive domination, and a Speaker whose loyalties have been continuously questioned by opposition Members of Parliament. One of the main criticisms levelled against the Speaker relates to the fact that she does not encourage and facilitate debate in Parliament. The word 'Parliament' originates from the Latin word 'parliamentum' and the French word 'parler', which when translated into English, literally means 'to talk'.<sup>9</sup> Additionally, Loewenstein submits that,

'Parliament can be seen as a body with a limited number of members whose official function it is to 'represent' others who cannot, by reason of their numbers or geographical dispersal, attend themselves. This implies that the voices of all the people in a country will be heard through their respective representatives in Parliament.'<sup>10</sup>

During the apartheid era the South African Parliament was weakened due to executive domination, and twenty one years into South Africa's democracy Parliament is again beginning to show signs of executive domination. This is a matter of concern because Parliament is considered to

---

<sup>7</sup> Concise Oxford Dictionary, 2015 Oxford University Press.

<sup>8</sup> Johnson JK "*The Role of Parliament in Government*" 2005 World Bank Institute, Washington D.C at page 2.

<sup>9</sup> Concise Oxford Dictionary, 2015 Oxford University Press.

<sup>10</sup> Loewenstein K "*British cabinet government*" 1967 London Oxford University Press as cited in "*Parliamentary information sources, systems and services in South Africa and the role of Parliamentary libraries in information provision*" 2004 University of Zululand, South Africa at page 19.

be the bedrock of South Africa's democratic dispensation and serves as the voice of the people.

## 1.2 Transition to Democracy

On 31 May 1910 South Africa became an autonomous State functioning within the British Commonwealth. The Union of South Africa, as it was termed, emerged as a result of the promulgation of the South Africa Act of 1909 (the Act) – the Act combined the Natal, Cape, Transvaal and the Orange Free State colonies to form the Union of South Africa. The newly adopted Act vested the legislative authority in the Union Parliament - which was bicameral and was located in Cape Town. The Union's Parliament consisted of a House of Assembly and a Senate and Members of the House of Assembly were elected through a majoritarian electoral system, whilst Members of the Senate were elected using a system of proportional representation. An executive council existed within Parliament and it acted as the Cabinet. Its core function was to oversee day to day political activity in Parliament.<sup>11</sup>

The House of Assembly was made up of Members who were directly elected by the voters. Voters in the Cape Province had to be male citizens who owned property worth 75 pounds, or who earned a salary of 50 pounds a year. Furthermore, in order to qualify as a voter a male needed to possess the ability to put his name, address and occupation in writing. Initially, there was no colour distinction in the Cape Province, thus Black and Coloured men were entitled to vote had they fulfilled the aforementioned requirements. However, the situation was vastly different in Natal, Transvaal and the Orange Free State. In order to vote in the latter provinces a person had to be male, white and 21 years of age. In Natal non-Whites were able to vote under certain conditions, however, according to Millin these conditions were 'so onerous that a vote was about as accessible to him as a white skin itself.'<sup>12</sup>

---

<sup>11</sup> Venter A *"Historical overview: the development of modern South African Politics"* 1989 South African government and politics: an introduction to its institutions, processes and policies. Johannesburg: Southern Book Publishers as cited in *"Parliamentary information sources, systems and services in South Africa and the role of Parliamentary libraries in information provision"* 2004 University of Zululand, South Africa at page 39.

<sup>12</sup> Millin SG *"The People of South Africa"* 1951 World Constitutions Illustrated pp 122- 199 at page 168.



In 1930 White women were granted the right to vote when General Hertzog introduced the Women's Enfranchisement Act.<sup>13</sup> A year later a Bill was introduced which brought an end to the distinction between European voters in all of the provinces- this meant that there was no longer any qualifying factors in the Cape Province. Thus, White people in South Africa were completely enfranchised whilst the other races were not. The abovementioned requirements (sex, education and wealth) still applied to non-White voters in the Cape Province.

In 1936 the Representation of Natives Act<sup>14</sup> ("the Act") was adopted by Parliament. The Act removed Black African men from the common voters' roll in the Cape and placed them on a communal voters' roll which entitled Black males in the Cape to elect three White representatives in three legislative divisions in the House of Assembly.<sup>15</sup> In 1956 the National Party government adopted the South Africa Act Amendment Act<sup>16</sup> which removed Coloured males from the common voter rolls in the Cape and placed them on a separate voters' roll, thus allowing them to vote for four White representatives in the House of Assembly.<sup>17</sup> In June 1960 Parliament adopted the Promotion of Bantu Self-governing Act<sup>18</sup> which repealed the Representation of Natives Act, therefore bringing an end to all Black African representation in Parliament.<sup>19</sup> Furthermore, in 1968 Coloured voters in the Cape had their voting rights revoked when the Separate Representation of Voters Amendment Act<sup>20</sup> was adopted together with the Coloured Persons Representative Council Amendment Act<sup>21</sup>. The former Act abolished Coloured representation in the South African Parliament, whilst the latter established a Coloured Persons Representative Council. The Council had the authority to legislate on behalf of Coloured people in certain areas.

---

<sup>13</sup> Hahlo and Khan *"The Union of South Africa: The Development of its Laws and Constitution"* 1960 at page 165.

<sup>14</sup> The Representation of Natives Act 12 of 1936.

<sup>15</sup> *Op. cit.* note 13 at page 165.

<sup>16</sup> South Africa Act Amendment Act 9 of 1956.

<sup>17</sup> *Op. cit.* note 13 at page 166.

<sup>18</sup> Promotion of Bantu Self-governing Act 46 of 1959.

<sup>19</sup> *Op. cit.* note 13 at page 165.

<sup>20</sup> The Separate Representation of Voters Amendment Act 50 of 1968.

<sup>21</sup> The Coloured Persons Representative Council Amendment Act 52 of 1968.

In May 1961 South Africa was expelled from the Commonwealth and subsequently became a Republic with its own Constitution<sup>22</sup>. The legislative function of the Republic of South Africa vested in Parliament which consisted of the House of Assembly and the Senate. The Republic of South Africa consisted of 165 constituencies, and therefore representation within the House of Assembly was made up of 165 constituent representatives, who were elected by White voters. The executive function vested with the State President and the Members who were appointed to his Cabinet. The Prime Minister was appointed by the State President. Toward the end of the *apartheid* regime, the Republic of South Africa began to descend into political turmoil and according to Mostert, 'the executive usurped the political role of Parliament, diminishing it to a policy-legitimising body, rather than a policy leadership body.'<sup>23</sup>

In 1978 P. W Botha became the political leader of the Republic of South Africa. Botha initially served as the Prime Minister from 1978 to 1984, and thereafter was appointed as the State President from 1984 to 1989. During his term in office, State President Botha established a super committee within the Cabinet known as the State Security Council ("SSC"). According to Stott, the SSC assumed the position of the 'de facto Cabinet' thereby taking on a pivotal policy formulation role.<sup>24</sup> Often the SSC would make important decisions *vis-à-vis* South Africa, thus frequently exceeding the Cabinet as the most important decision making body in the country. During this period in the evolution of the South African legislature, the House of Assembly was an engine used by the executive to merely rubberstamp its policy directives.

In 1980 the Senate was formally abolished and was subsequently replaced with the President's Council which consisted of White, Chinese,

---

<sup>22</sup> The Republic of South Africa Constitution Act of 1961.

<sup>23</sup> Mostert BJ "*Parliamentary information sources, systems and services in South Africa and the role of Parliamentary libraries in information provision*" 2004 University of Zululand, South Africa at page 45.

<sup>24</sup> Stott N "*From the SADF to the SANDF: Safeguarding South Africa for a better life for all?*" 2002 Violence and Transition Series, Vol. 7 page number not available.

Coloured and Indian representatives.<sup>25</sup> The President's Council fulfilled an advisory role by advising the two other governmental institutions on matters relating to non-White persons.<sup>26</sup> In 1983, on the recommendation of the President's Council, the majority of Parliament adopted a new Constitution<sup>27</sup> which split Parliament into three different Houses: the Assembly, the House of Representatives and the House of Delegates. The Assembly consisted of White delegates, the House of Representatives of Coloured delegates, and the House of Delegates was made up of Indian representatives.<sup>28</sup> However, Black Africans remained disenfranchised and thus any form of representation of their people in the newly formed tricameral Parliament was prohibited.

In 1990 history was made when President F.W de Klerk announced that Nelson Mandela was to be released from Prison and that the African National Congress ("ANC") was to be un-banned. Furthermore, State President de Klerk announced that South Africa would begin the transition from parliamentary sovereignty into a state based on democracy. There would be a two-stage process of constitutional reform - the first stage of the process entailed negotiations as to what regime South Africa would follow, and remained under the control of the ANC and the National Party. The second stage would then be directed by the 34 Constitutional Principles decided upon through the Multi-party Negotiating Process. These principles were then used by an elected Constitutional Assembly and the Senate of the first democratic Parliament to draft a final Constitution.

During the initial stages of the negotiations the ANC made use of a document known as the Harare Declaration – a document requiring the *apartheid* government to fulfil certain conditions, one of which being the dissolution of all legislation which had been promulgated to limit political

---

<sup>25</sup>Mostert BJ "*Parliamentary information sources, systems and services in South Africa and the role of Parliamentary libraries in information provision*" 2004 University of Zululand, South Africa at page 44.

<sup>26</sup> Marais D "*South Africa: constitutional development: a multi-disciplinary approach*" 1989 Johannesburg Southern Book Publishers as cited in "*Parliamentary information sources, systems and services in South Africa and the role of Parliamentary libraries in information provision*" 2004 University of Zululand, South Africa at page 44.

<sup>27</sup> Republic of South Africa Constitution Act 110 of 1983.

<sup>28</sup> Olivier NJJ "*Race Discrimination in South Africa: An Overview*" 1989 Department of Roman law and Legal Pluralism, Potchefstroom University at page 310.

activity.<sup>29</sup> Toward the end of 1990 there were increased levels of violence between government armed forces and people living in the townships as well as residents living in the mining hostels. According to Klug the ANC did not want to make the end to violence a precondition for negotiations to continue, as the party leaders felt that it would place the *apartheid* government in a position to control future negotiations.<sup>30</sup> Therefore in order to ensure that South Africa transitioned smoothly to democracy, the ANC created a number of preconditions and advanced its own plan for the transition to a new order. The party called for, *inter alia* a multi-party negotiation conference, the creation of an interim government, and elections for a constituent Assembly to create a new official Constitution.<sup>31</sup>

In 1991 the Convention for a Democratic South Africa (“CODESA”) was established and the major parties came to an agreement on certain fundamental points. The parties agreed that South Africa would become a multi-party democracy with a Bill of Rights, and any rights disputes would be decided upon by a Constitutional Court. In 1993 South Africa adopted an Interim Constitution which came into force with the first democratic election in April 1994. The Interim Constitution contained 34 Constitutional Principles agreed upon through the process referred to previously. Furthermore, the Interim Constitution made provision for the creation of a final Constitution within two years of the first sitting of the National Assembly. It was agreed by the negotiating parties that the final Constitution had to be adopted by at least two-thirds of the Constitutional Assembly before it could be submitted to the Constitutional Court for final certification. The Constitutional Court needed to ensure that the final Constitution conformed to the 34 Constitutional Principles before certifying the text. Initially the Constitutional Court refused to certify the Constitution in its first certification judgment, however, it approved and certified the final text in the second certification judgment. The effect of which saw South Africa adopt a new Constitution which came into force on 4 February 1997.

---

<sup>29</sup> Klug H “*Constitution –making, Democracy and the ‘Civilizing’ of Irreconcilable Conflict What Might We Learn from the South African Miracle?*” 2007 Wisconsin International Law Journal Vol. 25, No. 2 pp 272 - 299 at page 272.

<sup>30</sup> *Ibid.* at page 273.

<sup>31</sup> *Ibid.* at page 273.

### 1.3 The Legislature in terms of the Constitution

Constitutional Principle VI, as contained in the Interim Constitution, established a uniquely South African separation of powers doctrine. The doctrine required a separation between the legislature, executive and the judiciary with appropriate checks and balances to ensure accountability, responsiveness and openness.<sup>32</sup> The main objective for the incorporation of the doctrine was to safeguard against the over-allocation of power to one branch of government. Under the Constitution, the South African government is made up of three branches of government which are all mutually supportive of one and the other.<sup>33</sup> In *Doctors for Life International v Speaker of the National Assembly*<sup>34</sup> Ngcobo J reiterated this point by stating:

‘In the overall scheme of our Constitution, the representative and participatory elements of our democracy should not be seen as being in tension with each other. They must be seen as mutually supportive...’<sup>35</sup>

The adoption of the final Constitution reaffirmed the *status quo* by providing for three distinct branches of government: a legislative authority (Chapter 4), an executive authority (Chapter 5) and a judicial authority (Chapter 8). The national legislative authority is vested in Parliament<sup>36</sup>; the executive authority is vested in the President<sup>37</sup>; and the judicial authority is vested in the courts.<sup>38</sup>

The Constitution provides that Parliament consists of the National Assembly (“NA”) and the National Council of Provinces (“NCOP”). The NA comprises 400 Members that are elected to serve a five year term. Members are elected under a closed list proportional representation electoral system. The NCOP consists of a single delegation from each province, each

---

<sup>32</sup> Constitutional Principle VI as contained in the Interim Constitution of the Republic of South Africa Act 200 of 1993.

<sup>33</sup> MJ Kock “*The impact of political steering on the legislative process*” 2013 LLM Dissertation, University of Pretoria at page 5.

<sup>34</sup> *Doctors for Life International v Speaker of the National Assembly* 2006 (12) BCLR 1399 (CC).

<sup>35</sup> Ngcobo J, *supra* at para 115.

<sup>36</sup> Section 43 (a) of the Constitution.

<sup>37</sup> Section 85 (1) of the Constitution.

<sup>38</sup> Section 165 of the Constitution.

consisting of ten delegates.<sup>39</sup> The NCOP is made up of four special delegates and six permanent delegates.<sup>40</sup>

The Constitution confers upon the NA the legislative authority to 'consider, pass, amend or reject any legislation before the Assembly; and initiate or prepare legislation, except money Bills.'<sup>41</sup> In addition to its legislative function, the NA is obliged to,

'Provide for mechanisms - to ensure that all executive organs of state in the national sphere of government are accountable to it; and to maintain oversight of - the exercise of national executive authority, including the implementation of legislation; and any organ of state.'<sup>42</sup>

Further to the abovementioned, the Constitution makes provision for the powers of the NCOP. The text states that,

'In exercising its legislative power, the National Council of Provinces may - consider, pass, amend, propose amendments to or reject any legislation before the Council...; and initiate or prepare legislation falling within a functional area listed in schedule 4 or other legislation referred to in section 76(3), but may not initiate or prepare money Bills.'<sup>43</sup>

In accordance with South Africa's constitutional frame-work, Parliament fulfils a dual purpose by passing legislation and providing a national forum for public deliberation on matters of national importance.<sup>44</sup> In *Doctors for Life International* Ngcobo J emphasized the importance of Parliament's deliberative role by explaining that,

'A vibrant democracy has a qualitative and not just a quantitative dimension. Dialogue and deliberation go hand in hand. This is part of

---

<sup>39</sup> Section 60 (1) of the Constitution.

<sup>40</sup> Section 60(2) of the Constitution.

<sup>41</sup> Section 55 (1) of the Constitution.

<sup>42</sup> Section 55(2) of the Constitution.

<sup>43</sup> Section 68 of the Constitution.

<sup>44</sup> *Primedia Broadcasting, A Division of Primedia (Pty) Ltd and Others v Speaker of the National Assembly and Others* (2015) ZAWCHC 72.

the tolerance and civility that characterise the respect for diversity the Constitution demands...'<sup>45</sup>

The South African Parliament is largely based on the Westminster model of Parliament with the Speaker of Parliament located at the head of the chamber. A Mace is located in front of the Speaker as a symbol of authority, and the Sergeant-at-arms is present to maintain order and when addressing each other in Parliament, Members are required to refer to each other as 'the Honourable Member'. The ruling party is seated on the right of the Speaker and the opposition parties are located on the left.

#### **1.4 Evolution of the Speakership**

In South Africa, the leader of the National Assembly is the Speaker of said office and the leader of the NCOP is referred to as the Chairperson. Further reference to the NCOP however will not be made throughout the remainder of this paper, as this is not the focus. The paper will primarily focus its attention on the NA and the office of the Speaker to allow for a more concise investigation into the actual underlying focus of the paper itself – the office of the Speaker. As the leader of the National Assembly, the Speaker is to provide leadership and guidance to the Members of the House. For further purposes of this paper, the paragraphs to follow will analyse the evolution of the office of the Speaker in the United Kingdom. As previously mentioned, South Africa's parliamentary system has its historical roots in the Westminster system, and therefore the roles and functions of the Speakership have to a large extent been inherited from the United Kingdom. It is therefore imperative to analyse the evolution of the office of the Speaker in the House of Commons, so as to gain a better understanding of the South African model.

The office of the Speaker is somewhat as old as Parliament itself, with the first Speaker being selected by the House of Commons ("the House") in 1376. The Speaker's function in the early stages of its inception was not to preside over parliamentary debate but rather to listen in on the debates taking place between Members of the House, in order to gather the agreed

---

<sup>45</sup> Ngcobo J *supra* at para 234.

views of the majority on a matter and then relay the views to the King.<sup>46</sup> Additionally, the Speaker's job was to communicate any decisions taken by the King on any matter back to the House of Commons.<sup>47</sup>

At this point in the history of the Speakership, candidates were nominated by the King, thus the perception at the time was that the Speaker was indeed a servant of the Monarch. In 1413 however, the House of Commons rejected a candidate who had been nominated by the Monarch, as the candidate had presented a petition to the King without first gathering the views of the House on a particular matter. This was the first documented occasion of the House rejecting a candidate and then replacing him with a more acceptable candidate.<sup>48</sup> The reaction of the House signified that although the royal Court was extremely powerful at the time, the Commons had the power to reject a candidate and replace him with someone more favourable.

In 1642 the House of Commons and the Monarch were caught up in a bitter power struggle. The King at the time was of the opinion that he was able to pass any law of the land as a result of his divine right to rule. In an attempt to assert his dominance, the King did the unthinkable and entered into the House of Commons to order the arrest of five Members who had allegedly opposed his rule. The King turned to William Lenthall, who was the Speaker at the time, and asked him to point out the five Members. Lenthall respectfully declined to do so by replying:

'May it please Your Majesty, I have neither eyes to see, nor tongue to speak in this place, but as the House is pleased to direct me, whose servant I am here; and I humbly beg Your Majesty's pardon that I cannot give any other answer than this to what Your Majesty is pleased to demand of me.'<sup>49</sup>

This historical event signified the distancing of the Speaker itself from the Monarch and was beginning to show signs of independence and

---

<sup>46</sup> Laundy P "The Office of Speaker in the Parliaments of the Commonwealth" 1984 at page 11.

<sup>47</sup> *Ibid.* at page 15.

<sup>48</sup> *Ibid.* at page 18.

<sup>49</sup> *Ibid.* at page 34.



impartiality.<sup>50</sup> By 1658 the Clerk and the Mace were introduced into Parliament. The Clerk presided over proceedings before the Speaker was present and once the Speaker occupied the Chair, the Mace was brought in to the House to indicate that the power had now shifted from the Clerk to the Speaker.<sup>51</sup>

The appointment of Richard Onslow as Speaker in 1566 was significant for the reason that his nomination was the first to be contested on record. It had emerged that Onslow had previously held office as a Solicitor-General and Members of the House believed that his political ties may have had a negative impact on his role as the Speaker. Onslow however emerged victorious by capturing 82 votes to his opponent's 70. Although Onslow had emerged victorious, the call for an election signified a growing belief amongst Members that it was in the best interests of the House to nominate a candidate who was less likely to have his loyalties questioned.<sup>52</sup>

In 1661 a gentleman by the name of Edward Seymour was selected as the Speaker of the House. Soon after his appointment as Speaker, Seymour was further appointed as a Privy Councillor. His appointment gave rise to a debate amongst the Members, who argued that the appointment created a conflict of interest. Laundry argues that this debate provides evidence of what he terms, 'the growth of a new parliamentary outlook' as a result of Members agreeing that the Speaker had to be independent of the Court in order to carry out his duties successfully.<sup>53</sup>

In 1679 a Welsh Member of the House, William Williams, was elected to serve as the Speaker. The election of Williams as Speaker was a significant moment in the evolution of the office as according to Laundry, Williams was not nominated by the royal Court and evidence suggests that he was a radical person who was not afraid to publically criticise the

---

<sup>50</sup> Seedat *et al* "The South African Parliament in 2015" 2015 Council for the Advancement of the South African Constitution at page 28.

<sup>51</sup> Commons Journal, Vol. VII at page 594 cited in "The Office of Speaker in the Parliaments of the Commonwealth" 1984 at page 36.

<sup>52</sup> Laundry P "The Office of Speaker in the Parliaments of the Commonwealth" 1984 at page 25.

<sup>53</sup> *Ibid.* at page 38.

Monarch.<sup>54</sup> The election of Williams signified that an isolation between the office of the Speaker and the Court had become tradition, and it was no longer customary for the monarch to nominate a representative. A candidate was now nominated by his Party in the House. Laundry submits that an incumbent was expected to retain his partisan ties in order to 'advance the interests of the party to which he owed his appointment.'<sup>55</sup>

The isolation of the Speakership from the royal Court strengthened the independence of Parliament, however, the isolation came at the expense of placing the Speakership in the hands of political parties more concerned with forwarding their own personal interests rather than maintaining the independence and impartiality of the office. The election of Arthur Onslow in 1728, who was dubbed as one of the greatest Speakers of all time, was a significant moment in the evolutionary journey and came about at arguably the perfect time. Onslow was the first Speaker to fully appreciate the importance of having an independent office holder and he used his appointment to restore some credibility to the office by placing great emphasis on the importance of having an independent and impartial incumbent. Laundry submits that it was Onslow who was responsible for ensuring that the Speaker relinquished partisan ties in order to maintain a high level of impartiality whilst in office.<sup>56</sup>

Finally by the 19<sup>th</sup> century, the office of the Speaker began to emerge as a completely independent office and it was becoming the norm for a candidate to resign from any ministerial office he may have occupied prior to his election.<sup>57</sup>

In August 1841, a Liberal Speaker by the name of Charles Shaw-Lefevre was elected to office. Like Arthur Onslow, Shaw-Lefevre appreciated the importance of setting a high standard of impartiality by removing himself from any political events.<sup>58</sup> Laundry goes as far as stating that Shaw-Lefevre

---

<sup>54</sup> *Ibid* at page 39.

<sup>55</sup> *Ibid* at page 40.

<sup>56</sup> *Ibid* at page 42.

<sup>57</sup> *Ibid* at page 45.

<sup>58</sup> *Ibid* at page 50.

‘was the first embodiment of the politically independent Speaker.’<sup>59</sup> It was at this time in the evolutionary process that it became customary for a Speaker to display a high level of independence and impartiality whilst holding office.

The evolution of the Speaker of the House of Commons in the United Kingdom has given rise to a robust set of traditions *vis-à-vis* the Speakership. Upon evaluating the evolutionary process two findings have become apparent. Firstly according to tradition, an office holder is required to display a high level of impartiality and independence to not only effectively fulfil the role and function as the leader of Parliament, but also to protect the sanctity of the institution. Secondly, it is apparent that the office of the Speaker in South Africa has adopted a substantial number of customs and processes associated with the Speakership of the House of Commons. It is therefore fitting that one assesses the South African system by studying it in conjunction with the Westminster model.

### **1.5 The Intention of the Paper**

The main intention of this paper is to ascertain whether the Speakership and Parliament are involved in a symbiotic relationship. This paper will assess whether a weak incumbent will have an adverse effect on the NA thereby weakening the capacity of the NA itself. The word ‘*symbiosis*’ is of Greek origin and Latin descent and when defined means, ‘a mutually beneficial relationship between different people or groups.’<sup>60</sup> In the Chapter to follow it is my intention to investigate the duties and functions of the Speaker by assessing the NA’s standing orders, traditions, as well as any relevant sources such as case law and academic writings. In Chapter Three I will reveal a number of criticisms regarding the office of the Speaker. In so doing, I will assess whether South Africa’s dominant party democracy has had a hand in negatively impacting the office. Furthermore, I will investigate whether the Speaker has indeed carried out the duties of the office in an impartial and fair manner. In Chapter Four I will investigate ways in which foreign legislatures have attempted to strengthen and enhance the independence and the functioning of the office. I intend to propose a range of

---

<sup>59</sup> *Ibid* at page 50.

<sup>60</sup> Concise Oxford Dictionary, 2015 Oxford University Press.

possible solutions which I will argue could potentially strengthen and enhance the independence of the South African Speakership and thereby strengthen the NA.

## CHAPTER TWO

### The South African Constitutional and Legislative Framework

#### 2.1 Introduction

The South African Constitution contains a provision concerning the Speaker and the Deputy Speaker of the NA.<sup>61</sup> Although no details as to the powers and functions of the Speaker and Deputy Speaker are provided, it does contain information relating to the election and removal of an office holder. According to Bergougous the 'rules governing the... nomination procedure and the Speaker's functions' are generally set out in the Rules of the House.<sup>62</sup> As it stands, the Rules of the National Assembly of South Africa ("the Rules") do not confine the roles, duties and powers of the Speaker to one particular Rule, so there are various provisions contained throughout the Rules that provide information pertaining to the functions and powers of the Speakership.<sup>63</sup> In the near future there is a possibility that the Rules could be amended to include a specific Rule confining the duties and functions of a Speaker.<sup>64</sup>

#### 2.2 Election Procedure

The Rules state that the Secretary or an officer of Parliament nominated by him, has the task of informing the NA that it must elect a Speaker and a Deputy Speaker.<sup>65</sup> Directly following on from this the Chief Justice, or another judge designated to do so, must preside over the election process.<sup>66</sup> The NA must elect a Speaker and a Deputy Speaker from amongst its members, at the first sitting of Parliament.<sup>67</sup> All Members are eligible for the position but a Member's candidature must be supported by a

---

<sup>61</sup> Section 52 of the Constitution.

<sup>62</sup> Bergougous G "*Presiding Officers of National Parliamentary Assemblies: A World Comparative Study*" 1997 Inter-Parliamentary Union Geneva at page 5.

<sup>63</sup> Speakership refers to the Speaker of the NA, the Deputy Speaker of the NA and any presiding officer upon whom the Speaker or Deputy Speaker has delegated his or her authority to act as Chair of a sitting.

<sup>64</sup> Rules of the National Assembly. Progress Report on Review of Parliament Rules: report back by sub-committee, 4 February 2015.

<sup>65</sup> Rule 13(1) of the Rules of the National Assembly of South Africa, 8<sup>th</sup> Edition (the Rules).

<sup>66</sup> Section 52(2) of the Constitution.

<sup>67</sup> Rule 9 and section 52(1) of the Constitution.

minimum of two Members.<sup>68</sup> If more than one person is nominated, a vote must be taken by secret ballot<sup>69</sup>, but should the Assembly nominate only one candidate, no formal election procedure is necessary, and said candidate is announced as Speaker of the NA. After expressing a sense of the honour conferred upon him or her, the newly-elected Speaker of the NA presides over the election of the Deputy Speaker by inviting Members to provide nominations for the position of the Deputy Speaker as per the process above.<sup>70</sup>

The Speaker holds office for the duration of the term of an Assembly and is eligible for re-election upon the expiry of their first term. As is the case with most systems influenced by the Westminster model, the NA has the power to remove the Speaker through a resolution of no confidence. The resolution must be adopted by a majority of Members of the House for the motion to take effect. This is a Westminster custom which has been adopted by South Africa through a provision in the Constitution, which provides that:

‘The National Assembly may remove the Speaker or Deputy Speaker from office by resolution. A majority of the members of the Assembly must be present when the resolution is adopted.’<sup>71</sup>

Bergougous notes that when the Speaker is removed from office by a motion of no confidence, the reasons for removal are usually based on the loss of political confidence in the Speaker, and the removal should not be viewed as a way of punishing the Speaker.<sup>72</sup>

### **2.3 The Role of the Speaker**

Bergougous explains that when one assesses the office of the Speaker, it is important to consider ‘not only the structural dimensions of the office but also the functions themselves.’<sup>73</sup> In the paragraphs to follow, I will

---

<sup>68</sup> Bergougous G “*Presiding Officers of National Parliamentary Assemblies: A World Comparative Study*” 1997 Inter-Parliamentary Union Geneva at page 10.

<sup>69</sup> Schedule 3 Part A of the Constitution.

<sup>70</sup> Section 52(2) of the Constitution.

<sup>71</sup> Section 52(4) of the Constitution.

<sup>72</sup> Bergougous G “*Presiding Officers of National Parliamentary Assemblies: A World Comparative Study*” 1997 Inter-Parliamentary Union Geneva at page 34.

<sup>73</sup> Bergougous G “*Presiding Officers of National Parliamentary Assemblies: A World Comparative Study*” 1997 Inter-Parliamentary Union Geneva at page 3.

analyse the functions and powers of the Speaker of the NA as provided for by the Joint Rules of Parliament<sup>74</sup> (“the Joint Rules”), the Rules of the NA<sup>75</sup> (“the Rules”), the NA Guide to Procedure<sup>76</sup> (“the Guide”), and any other relevant source.

The Guide states that the Speaker acts as the head of the legislative arm of government as well as the representative and spokesperson for the NA when dealing with the other branches of government, outside organisations and persons.<sup>77</sup> Additionally, the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act<sup>78</sup> (“the Act”) explains that the Speaker of the NA and the Chairperson of the NCOP exercise joint control and authority over the precincts on behalf of Parliament.<sup>79</sup> The Constitution states that the Speaker will fulfil the role of acting President of South Africa when the President is absent from the Republic or when there is a vacancy in the office, and the Speaker will hold office until a new President is chosen from amongst the Members of the NA.<sup>80</sup>

## 2.4 Functions of the Speaker

The Speaker has the task of chairing meetings of the NA when it is sitting in plenary.<sup>81</sup> The Speaker must commence the proceedings by making necessary formal announcements on the day’s activities as reflected on the Order Paper.<sup>82</sup> During sittings the Speaker must ensure order is maintained in the House by calling upon Members to speak in accordance with lists of speakers provided by the Whips of each party. Any speech made by a Member during the course of a debate, or during a question and answer session, must be directed to the Speaker. In responding to a Member the Speaker is guided by the Rules, conventions, established practices and

---

<sup>74</sup> Joint Rules of Parliament of South Africa, 5<sup>th</sup> Edition (the Joint Rules).

<sup>75</sup> Rules of the National Assembly of South Africa, 8<sup>th</sup> Edition (the Rules).

<sup>76</sup> National Assemblies Guide to Procedure 2004, Parliament of the Republic of South Africa.

<sup>77</sup> *Ibid.* at page 21.

<sup>78</sup> The Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004 (the Act).

<sup>79</sup> Section 3 of the Act.

<sup>80</sup> Section 90 of the Constitution.

<sup>81</sup> National Assemblies Guide to Procedure 2004, Parliament of the Republic of South Africa page 18.

<sup>82</sup> *Ibid.* at page 19.

precedent which the office-holder must interpret objectively when framing a ruling.<sup>83</sup> This practice obtains so that the Speaker is able to protect the rights and interests of each party present in the NA during sittings as well as to 'uphold the dignity and good name of the House.'<sup>84</sup> Whilst presiding over a sitting, the Speaker or any presiding officer 'has no deliberative vote, but must cast a deciding vote when there is an equal number of votes on both sides of the question.'<sup>85</sup> Additionally, the Speaker is required to cast a vote on a matter when a question must be decided with a supporting vote of at least two-thirds of the Members.<sup>86</sup> At the conclusion of the parliamentary working day, the Speaker has the authority to adjourn proceedings, or even suspend proceedings in certain circumstances.

In addition to ensuring sittings run in an orderly fashion, the Speaker is the main communication channel between the House and any outside body or person. Any official communication originating from the NA is signed by the Speaker before it leaves the NA, and any communication intended for the House is addressed to the Speaker. Additionally, the Guide explains that the Speaker represents the NA on formal occasions.<sup>87</sup>

#### **2.4.1 The Speaker Chairs Various Committees**

The National Assembly consists of between 350 and 400 members whilst sitting in plenary and it may be difficult for meaningful debate to take place when all Members are present. Therefore, in order to ensure that Members are able to work more effectively and efficiently, smaller bodies or committees were created to fulfil specific functions. The Guide states that the Speaker *ex officio* chairs various internal Committees of the NA. These committees include:

'The Rules Committee; its Subcommittee on International Relations; the Programme Committee; and, with the Chairperson of the Council, he or she co-chairs the Joint Rules Committee and its Joint

---

<sup>83</sup> *Tlouamma and Others v Mbete, Speaker of the National Assembly of the Parliament of the Republic of South Africa and Another* [2015] ZAWCHC at para 76.

<sup>84</sup> National Assemblies Guide to Procedure 2004, Parliament of the Republic of South Africa at page 18.

<sup>85</sup> *Ibid.* at page 21.

<sup>86</sup> *Ibid.* at page 21.

<sup>87</sup> *Ibid.* at page 21.



Subcommittee on International Relations and the Joint Programme Committee. He or she is an *ex officio* member of the Chief Whips' Forum and of the Joint Tagging Mechanism.'<sup>88</sup>

#### **2.4.2 The Power to Delegate Authority**

If a Speaker is unable to attend a sitting, the Rules state that s/he may request the Deputy Speaker or a House Chairperson to preside over a sitting at any time.<sup>89</sup> Additionally, if the Speaker is absent from Parliament, or if the office of the Speaker is vacant, the Rules state that the Deputy Speaker may assume the role of the Speaker, and if both the Speaker and the Deputy Speaker are absent from Parliament, the Speaker or Deputy Speaker, may delegate the role to a House Chairperson for the duration of their absence from Parliament.<sup>90</sup>

#### **2.4.3 The Power to Interpret or Create a Rule**

Whilst in session the Speaker must maintain order in the NA by interpreting and applying the Rules, parliamentary conventions, and precedent. The Speaker must respond to Members' points of order by issuing rulings on matters where the rules are silent, or where there is no precedent on a particular matter. In so doing, the Speaker ensures that Members comply with the procedures, processes, customs, as well as any traditions of the institution.

In a situation where the Rules are silent on a particular point, and there is no precedent on the matter, the Rules state that:

'(1) The Speaker may give a ruling or frame a Rule in respect of any eventuality for which these Rules do not provide.

(2) A Rule framed by the Speaker shall remain in force until a meeting of the Rules Committee has decided thereon.'<sup>91</sup>

If a dispute arises regarding a certain process or procedure, the Speaker is required to hear argument on the matter, and after hearing argument, the

---

<sup>88</sup> *Ibid.* at page 22.

<sup>89</sup> Rule 15.

<sup>90</sup> Rule 16.

<sup>91</sup> Rule 2.

Speaker is required to give a ruling on the disputed point. The ruling remains in force until it has been considered by the rules committee.

#### **2.4.4 The Power to Discipline**

Given the often fraught and tumultuous nature of debate during sittings, there is always the dormant threat for Member misconduct to escalate throughout the House. Thus, a Speaker must ensure that order is maintained to allow for the NA 'to fulfil its constitutional mandate to pass legislation in a manner that promotes a participatory and representative democracy, and to hold the executive to account.'<sup>92</sup> Empowering provisions have been adopted which provide the Speaker with the authority to discipline Members in pursuit of maintaining the decorum.

##### **2.4.4.1 Disciplinary Powers Provided for by the Rules**

A Speaker may order a Member to withdraw from the House for the remainder of the day if: the Member's conduct contravenes a provision of the Rules, s/he disregards the authority of the presiding officer, or if s/he acts with gross disorder.<sup>93</sup> Additionally, the Speaker is empowered to suspend a Member who has committed a serious contravention, and when an order to withdraw is inadequate.<sup>94</sup> If the presiding officer is not the Speaker, s/he must name a disorderly Member, and after consulting with the presiding officer, the Speaker may take any action deemed necessary against the Member.<sup>95</sup> A Member who has been named will not be allowed to return to the precincts of Parliament, 'Before the action taken against him or her by the Speaker has been announced.'<sup>96</sup> If it is a Member's first suspension, the suspension will last for five parliamentary working days. If it is a Member's second suspension, the suspension will last for ten days, and if a Member is suspended for a third time, the suspension will last for 20 parliamentary working days.<sup>97</sup> A suspended Member may write an expression of regret, and

---

<sup>92</sup> *Tlouamma and Others v Mbete, Speaker of the National Assembly of the Parliament of the Republic of South Africa and Another* [2015] ZAWCHC at para 82.

<sup>93</sup> Rule 51.

<sup>94</sup> Rule 52 (a).

<sup>95</sup> Rule 52 (b).

<sup>96</sup> Rule 53(4).

<sup>97</sup> Rule 54.

if the Speaker approves the Member's expression of regret, s/he may discharge the Member's suspension.<sup>98</sup>

#### 2.4.4.2 *Disciplinary Powers Provided for by the Act*

The Act empowers a Speaker to call upon personnel of the parliamentary security services to carry out his or her instructions in the precincts of Parliament.<sup>99</sup> Additionally the Act allows a Speaker to order the arrest and removal of a person from the precincts of Parliament for disrupting a joint sitting of Parliament, a sitting of the House, or a sitting of a committee.<sup>100</sup>

The meaning and constitutionality of section 11 of the Act was challenged by the Democratic Alliance ("DA") in *Democratic Alliance v Speaker of the National Assembly and Others*<sup>101</sup>. The High Court held that section 11 is 'constitutionally flawed' because 'a member may not be arrested under s 11 if the conduct that led to the arrest is protected under s 58(1) (b) and 71(1) (b) [of the Constitution].'<sup>102</sup> The Court therefore declared section 11 of the Act constitutionally invalid to the extent that it allows for a Member to be arrested for conduct protected by the section 58(1) (b) and 71 (1) (b) of the Constitution, and thus ordered Parliament to remedy the defect within twelve months.<sup>103</sup>

The Court recognised the importance of protecting a Member's right to freedom of expression in Parliament by explaining that freedom of expression is a core foundational principle of the institution, and a Member should not be forced to remain silent because s/he is fearful of removal as this is in direct contravention of this foundational principle. Whilst it is recognised that a Speaker must possess the power to discipline Members in order to ensure the efficient running of Parliament, the Speaker must not be empowered to order the arrest and removal of a Member for conduct that is protected by the Constitution.

---

<sup>98</sup> Rule 55.

<sup>99</sup> Section 4 of the Act.

<sup>100</sup> Section 11 of the Act.

<sup>101</sup> *Democratic Alliance v Speaker of the National Assembly and Others* (2015) ZAWCHC 60.

<sup>102</sup> Le Grange J *supra* at para 47.

<sup>103</sup> Le Grange J *supra* at para 48.

## 2.5 The Duty to Act ‘Fairly and Impartially’

The Guide states that ‘the Speaker is required to act fairly and impartially to ensure that the rights of all parties, including minority parties, are protected.’<sup>104</sup> In *Lekota and Another v Speaker, National Assembly and Another*<sup>105</sup> Fourie J explained that although the Speaker is affiliated to a political party, the incumbent, ‘is required to perform the functions of that office fairly and impartially in the interests of the National Assembly and Parliament.’<sup>106</sup> Furthermore, in *Brummer, NO v Mvimbi and Others*<sup>107</sup> the Court explained that the Speaker’s functioning is regulated by the common law which demands that the Speaker be completely impartial and non-partisan both inside the Chamber and outside the Chamber.<sup>108</sup>

Laundy explains that a Speaker should work to ‘avoid an adversarial role’, and should attempt to carry out the role in a similar manner to that of a judge or an independent arbiter.<sup>109</sup> Moreover, in *Gauteng Provincial Legislature v Killian and Others*<sup>110</sup> Zulman JA held that a Speaker ‘is required by the duties of his office to exercise, and display, the impartiality of a judge.’<sup>111</sup> Assuming that both Laundy and Zulman JA’s submissions are correct, one must look at policy regulating the duties of a judge as an aid in determining whether the two positions are indeed capable of comparison.

The Code of Judicial Conduct<sup>112</sup> (“the Code”), has been adopted in terms of the Judicial Service Commission Act<sup>113</sup>, and it provides an explanation as to what is expected of a judge in carrying out the role of a judicial officer. The Code states that a judge has the duty to:

‘(a) uphold the independence and integrity of the judiciary and the authority of the courts;

---

<sup>104</sup> Page 18 of the Guide.

<sup>105</sup> *Lekota and Another v Speaker, National Assembly and Another* 2012 ZAWCHC 385.

<sup>106</sup> Fourie J *supra* at para 11.

<sup>107</sup> *Brummer, NO v Mvimbi and Others* 13535/2011 [2011] ZAWCHC 385.

<sup>108</sup> Cloete JA *supra* at para 48.

<sup>109</sup> Laundy P “*The Office of Speaker in the Parliaments of the Commonwealth*” 1984 at page 50.

<sup>110</sup> *Gauteng Provincial Legislature v Kilian and Others* [2000] ZASCA 161; 2001 (2) SA 68 (SCA).

<sup>111</sup> Zulman JA *supra* at para 30.

<sup>112</sup> GNR.865 of 18 October 2012: Code of Judicial Conduct.

<sup>113</sup> Judicial Service Commission Act 9 of 1994.

- (b) maintain an independence of mind in the performance of judicial duties;
- (c) take all reasonable steps to ensure that no person or organ of state interferes with the functioning of the courts; and
- (d) not ask for nor accept any special favour or dispensation from the executive or any interest group.<sup>114</sup>

The Code provides that a judge is duty bound to act honourably at all times and all the activities carried out by a particular judge, 'must be compatible with the status of judicial office.'<sup>115</sup> In *National Director of Public Prosecutions v Zuma*<sup>116</sup> the SCA set out to provide an interpretation of the functions of a judicial officer. Harms DP explained that a judge should maintain a high level of independence when performing its functions.<sup>117</sup> Moreover, Harms DP explained that a judge is entitled to have a personal opinion on an issue, however, judges may not introduce any personal thoughts or political beliefs into any of their judgments.<sup>118</sup>

Upon evaluating the roles and functions of a judge, it is clear that there is merit in the statements made by Laundry and Zulman JA because the roles and functions of a judge, in terms of the law, are very similar to those of the Speaker. Like a judge, the Speaker is expected to uphold the independence and integrity of the institution, act fairly and impartially in the performance of its functions, take every reasonable step to ensure that no person or organ of State interferes with the functioning of the NA, and must not accept any special favour from the executive or any interest group, as this may impact negatively on the perceived independence of the institution. Thus, when one considers the tradition of impartiality adopted from the Westminster system, as well as the aforementioned law, it is clear that, whilst holding office, a Speaker must act fairly, impartially and must maintain his or her neutrality.

---

<sup>114</sup> Article 4 of the Code.

<sup>115</sup> Article 5 of the Code.

<sup>116</sup> *National Director of Public Prosecutions v Zuma* 2009 (1) SACR 361 (SCA).

<sup>117</sup> Harms DP *supra* at para 15.

<sup>118</sup> Harms DP *supra* at para 16.

## 2.6 Conclusion

According to Bergougous, a Speaker must exercise 'a keen sense of conciliation while at the same time asserting his or her authority.'<sup>119</sup> As such, a Speaker must strike a balance between his or her political affiliations and the duty owed to the NA. In so doing, an office holder must exercise the authority of the role with the utmost impartiality so as to retain the confidence of Members of the NA, including that of the minority parties.<sup>120</sup>

It is thus clear that the Speaker exercises a vital function by ensuring the efficient functioning of the NA. Laundry states that the office of the Speaker is 'the linch-pin of the whole chariot' and it should be viewed as 'one of the trustees of a nation's liberties.'<sup>121</sup> Without the office of the Speaker or a vacancy therein during parliamentary sittings, and therefore nobody serving Members' rights, the South African NA would struggle to fulfil its legislative function and constitutional mandate. In conclusion, the NA and the office of the Speaker function symbiotically and the relationship between the two institutions is thus interdependent as well as mutually beneficial. Through applying the Rules and precedents of the institution impartially, the Speaker works toward advancing the development of the NA and strengthening the capacity of the institution as a whole.

---

<sup>119</sup> Bergougous G "*Presiding Officers of National Parliamentary Assemblies: A World Comparative Study*" 1997 Inter-Parliamentary Union Geneva at page 117.

<sup>120</sup> *Ibid.* at page 117.

<sup>121</sup> Laundry P "*The Office of Speaker in the Parliaments of the Commonwealth*" 1984 at page 10.

## CHAPTER THREE

### Criticism of Aspects Relating to the Office of the Speaker in South Africa

#### 3.1 Introduction

The past two years have proven to be highly eventful in the South African legislature. In 2015 a signal jammer was used to jam electronic devices during the President's State of the Nation Address ("SONA"). That same evening, the House descended into chaos after Members of the Economic Freedom Fighters ("EFF") were forcefully removed from the Chamber by armed security personnel for disrupting proceedings. This was followed by the Democratic Alliance ("DA") walking out of the SONA proceedings after their leader alleged that the Speaker had acted *ultra vires* in allowing the South African Police Service to enter into the Chamber and remove Members of the EFF. In addition, Parliament has suffered many disruptions on other occasions as a result of Members disobeying the Speaker's office and rulings.

In 2014 a motion of no confidence was brought against the current Speaker, Baleka Mbete, by opposition parties who alleged that the Speaker was unable to act impartially and fairly as a result of her close affiliation to her political party (Mbete is the Chairperson of the African National Congress ("ANC") National Executive Committee ("NEC")). The motion against the Speaker was subsequently dismissed when the majority party asserted its voting dominance and overruled it. The quest to have the Speaker removed from office did not end with the dismissal of the motion, and in August 2015 certain opposition parties brought an application in the Western Cape High Court for a declaration that the Speaker of the NA was not a fit and proper person to hold office as a result of her lack of impartiality.<sup>122</sup> This lack of confidence in the Speaker is concerning because, as Laundry stated, she is 'the linch-pin of the whole chariot' and it is important that she retains the confidence of all the parties in the NA.

---

<sup>122</sup> *Tlouamma and Others v Mbete, Speaker of the National Assembly of the Parliament of the Republic of South Africa and Another* [2015] ZAWCHC.

Over the past two years the South African NA appears to have been weakened by, *inter alia*: a ruling party which, as it appears, is determined to maintain its current dominant status; a Speaker who has been accused of being partisan and unfair in performing the functions of the office; an opposition party which has used its presence in the NA to disrupt proceedings in an attempt to unsettle the majority party; and a clear division between the opposition parties. In this Chapter I will explore the potential influence of the dominant party on the office of the Speaker, as well as the alleged partisanship of the current office holder in performing the duties of the office. By exploring the relationships between the above, conclusions will be drawn as to whether they have had an adverse effect on the office of the Speaker as well as the NA.

### **3.2 The Impact of a Dominant Party on the Office of the Speaker**

The electoral system in South Africa is a multi-party system that ‘results, in general, in proportional representation.’<sup>123</sup> Ever since 1994 the ANC has managed to win power through elections that have been labelled free and fair by the Electoral Commission of South Africa (“IEC”). In 1994 the ANC won 62.6% of the vote which equated to 252 seats in the NA, in 1999 the ANC won 66.4% of the vote thus capturing 266 seats in the NA. In 2004 the ANC received 69.6% of the vote and in 2009 it received 65.9%. In 2014 the ANC won 62.15% of the vote, thereby giving the party 249 seats in the NA – a clear majority.

The abovementioned election results indicate that South Africa has emerged as a dominant party democracy as a result of, *inter alia*: the ruling party’s popularity amongst the electorate, and its attempts to centralise power.<sup>124</sup> The ANC has attempted to centralise power by adopting the notion of cadre deployment as a bench mark principle operating within the organisation. Giliomee, Myburg and Schlemmer submit that South Africa’s list system has allowed the ANC to ‘place loyalists in key positions, and at the same time compensate those who have lost out in internal power struggles

---

<sup>123</sup> Section 46 (1) (d) of the Constitution.

<sup>124</sup> Southall R “*The Dominant Party Debate in South Africa*” at page 70.



through redeployment to comfortable but less strategic posts.’<sup>125</sup> Cadre deployment in itself, if carried out correctly in accordance with the true underlying principles that it was designed for, may be advantageous for government. Cadre deployment however becomes a matter of concern when a party loyalist who may not fit basic criteria, is placed in a position of authority that requires political neutrality and impartiality when carrying out the functions of the role effectively.

It appears that the current dominant party often acts under the assumption that they will maintain the majority vote every five years. Based on this assumption it seems that they are acting without any regard for the will of the electorate and in a sense may be abusing the majority confidence shown in them. The assumption of the ruling party in this case is not unfounded because based on their previous experience the majority of the electorate will not turn against them. Due to this lack of accountability a dominant party could use its power to strengthen its political stronghold on the NA. The ANC as it seems has been able to maintain its tight grip on political power and pursue its political agenda by, *inter alia*: eroding the executive oversight function; implementing cadre deployment; and enforcing strict Member discipline. In the paragraphs to follow I will assess how each of these themes has impacted upon the office of the Speaker.

### **3.2.1 Erosion of the Executive Oversight Function**

Democratic South Africa has seen four Members of the NA elected to the office of the Speaker, all of whom have maintained close political ties with the ANC by serving as Members of the ruling party’s NEC. This is not problematic provided an incumbent is able to distinguish between his or her party allegiances and the duty owed to Parliament.<sup>126</sup> As previously stated, the current incumbent serves as the National Chairperson of the ANC NEC – a top official position in the organisation.

The ANC NEC comprises 100 Members and of those 100 Members, there are six top official positions – the President, the Deputy President, the

---

<sup>125</sup> Giliomee H et al “*Dominant Party Rule, Opposition Politics and Minorities in South Africa*” 2001 cited in “*Opposition and Democracy in South Africa*” London Frank Cass: 161-182.

<sup>126</sup> Laundry P “*The Office of Speaker in the Parliaments of the Commonwealth*” 1984 at page 10.

National Chairperson, the Secretary General, the Deputy Secretary General, and the Treasurer General. As the President of South Africa, Jacob Zuma is the head of the national executive branch of government. President Zuma also serves as the President of the ANC NEC. Cyril Ramaphosa holds office as the Deputy President of the South Africa, and therefore forms a part of the national executive. In addition, Deputy President Ramaphosa serves as the Deputy President of the ANC NEC. Baleka Mbete serves as the National Chairperson of the ANC NEC and as the Speaker of the NA.

During a parliamentary sitting on 6 August 2015, the Speaker shielded President Jacob Zuma from opposition scrutiny during a question and answer session. The President was asked a question by an opposition Member regarding the repayment of public funds used to improve security at the Nkandla residence. Members of the opposition felt that the President had answered the question inadequately, and instead of asking the President to respond adequately to the Member's question, the Speaker stymied the scrutiny by explaining to the opposition that the President had given an answer, and although it was 'an answer which you are not happy about, [it is] an answer nonetheless, that is what I am trying to prevail on you about [sic].' Following on from this, the Speaker refused to recognise any additional points of order on the matter, and even went as far as ignoring a Member of the opposition whilst he was trying to raise an additional point of order on the matter.

During that same sitting a Member of the opposition asked President Zuma a question regarding South Africa's failure to sign a trade agreement, and whether South Africa would ever be a signatory to the agreement. The President answered the Member's question by stating that this matter is a government issue and not an opposition issue. Furthermore, the President refused to answer the second part of the question. At this point another Member of the opposition asked the President to provide an adequate answer to the second part of the question relating to the trade agreement, and instead of asking the President to provide an answer, the Speaker interjected and ruled that the President had indeed provided an answer to the question and that the House must proceed on to the next question.

In *Tlouamma and Others v Mbete, Speaker of the National Assembly of the Parliament of the Republic of South Africa and Another*<sup>127</sup> the Court explained that because the Speaker is a political appointee, 'it is unavoidable that there will at times be tension as regards the Speaker's continued role as NEC Chair due to the difficulties in keeping a balance between the dual and conflicting roles.'<sup>128</sup> It could be deciphered from the above that the Speaker is having difficulties in striking a balance between her role as Speaker and her role as Chairperson of the ruling party. She is clearly portraying a high level of leniency and sympathy toward the executive. This is problematic because the legislature plays an important role in holding the executive accountable to the electorate for their actions. The Speaker has a duty 'to perform the functions of the office fairly and impartially in the interests of the NA and Parliament,'<sup>129</sup> and the above suggests that the office holder is attempting to avoid any political competition and thus political accountability.

### **3.2.2 Strict Member Discipline**

The African National Congress Constitution<sup>130</sup> ("ANC Constitution") provides for 148 sub rules governing Member discipline – an indication of the ruling party's commitment to ensure its Members toe the line, thus enabling the party to pursue its political mandate without opposition from within the organisation.

According to the ANC Constitution a Member 'must observe discipline, behave honestly and carry out loyally the decisions of the majority and decisions of higher bodies.'<sup>131</sup> Further to this, the ANC Constitution explains that if the party structures have adopted a certain stance on a policy or resolution, Members must 'familiarise themselves' with the content of the adopted policy or resolution, and any Member who does not abide by the decision taken, 'shall be liable to be disciplined.'<sup>132</sup>

---

<sup>127</sup> *Tlouamma and Others v Mbete, Speaker of the National Assembly of the Parliament of the Republic of South Africa and Another* [2015] ZAWCHC.

<sup>128</sup> Goliath J *supra* at para 143.

<sup>129</sup> Page 17 of the Guide.

<sup>130</sup> The African National Congress Constitution, as amended and adopted at the 53<sup>rd</sup> National Conference, Mangaung, 2012 ("ANC Constitution").

<sup>131</sup> Rule 5.2.7 of the ANC Constitution.

<sup>132</sup> Rule 25 of the ANC Constitution.

The ANC Constitution makes provision for a list of 'acts of misconduct'. It states that disciplinary proceedings may be invoked against a Member, if that Member is accused of, *inter alia*:

'25.17.3 Failing, refusing or neglecting to execute or comply with any ANC Policy, Standing Order, Rule, Regulation or Resolution adopted or made in terms of this Constitution or breaching the provisions of this Constitution;

25.17.4 behaving in a manner or making any utterance which brings or could bring or has the potential to bring or as a consequence thereof brings the ANC into disrepute;

25.17.11 undermining the respect for or impeding the functioning of any structure or committee of the ANC;

25.17.12 joining or supporting a political organisation or party, other than an organisation in alliance with the ANC, in a manner contrary to the aims, objectives and policy of the ANC;

25.17.19 in the case of a public representative, breaching his or her contract of deployment concluded with the NEC;

25.17.20 in the case of a member of an ANC Caucus, failing, refusing or neglecting to carry out or execute an instruction or mandate of such caucus.<sup>133</sup>

In addition to the abovementioned clauses, the ANC Constitution contains a provision dealing with party Members who hold elective office in any sphere of government, as follows:

'ANC members who hold elective office in any sphere of governance at national, provincial or local level are required to be members of the appropriate caucus, to function within its rules and to abide by its decisions under the general provisions of this Constitution and the constitutional structures of the ANC.'<sup>134</sup>

---

<sup>133</sup> Rule 25.17 of the ANC Constitution.

<sup>134</sup> Rule 5.4 of the ANC Constitution.

Any Member or representative who is found guilty of any of the abovementioned acts of misconduct, or any Member who fails to abide by decisions taken by the ruling party, may be suspended or expelled indefinitely from the organisation.<sup>135</sup>

The current Speaker is a Member of the ruling party who holds elective office in a national sphere of government, and therefore her conduct is governed by the ruling party's Constitution. Strict discipline by the ruling party not only forces its Members to toe the line, but it forces other party representatives, including the Speaker, to do so out of fear of being suspended or expelled from the ANC.

On 4 May 2014 the parliamentary Leader of the Democratic Alliance released a statement asking the then Speaker, Max Sisulu, to respond to reports that senior parliamentary officials had been summoned to appear before top ANC officials at the ruling party headquarters in Johannesburg. It was alleged by the DA that the parliamentary officials had been summoned to provide reasons as to why a parliamentary *ad hoc* committee had been established to assess the validity of submissions made by President Zuma to Parliament on the Nkandla matter.<sup>136</sup> It is assumed that the non-parliamentary wing of the ANC summoned Speaker Sisulu to its headquarters to enquire why an *ad hoc* committee had been set up without first seeking a decision from the structures of the ANC.

The abovementioned event seems to suggest that the non-parliamentary wing of the ANC is not afraid to summon any Member, regardless of office and the obligations therein, to its party headquarters should s/he make a decision that contradicts a decision taken by the structures of the ANC. The issue here is that the Speaker gains membership to the NA by way of nomination by his or her political party, and can be removed by the party which endorsed their nomination. The Constitution contains a provision stating that a person loses their membership of the NA

---

<sup>135</sup> Rule 25.21 of the ANC Constitution.

<sup>136</sup> Statement issued by Lindiwe Mazibuko MP, Parliamentary Leader of the Democratic Alliance, May 4 2014 accessed via <http://www.politicsweb.co.za/news-and-analysis/why-was-max-sisulu-summoned-to-luthuli-house--lind>.

when they are no longer a Member of the party that nominated him or her.<sup>137</sup> Should a Speaker be found guilty of an offence and punished, s/he may be expelled from the organisation and therefore would be without a job and an income. For this reason I submit that the Speaker will be more inclined to serve the interests of his or her political party so as to avoid possible expulsion.

### **3.2.3 *Parliamentary Wing v Non-Parliamentary Wing***

According to Choudhry the ANC's policy of cadre deployment has played a pivotal role in the achievement of democratic centralism in South Africa.<sup>138</sup> The current debate is therefore centred on the relationship between the parliamentary wing and the non-parliamentary wing of the ruling party, and which of the two is the custodian of political power in South Africa.<sup>139</sup>

Members of the ANC parliamentary wing represent the interests of the electorate in the NA and Members of the non-parliamentary wing hold office as a result of their political affiliations. In an attempt to assert its dominance on the political landscape in South Africa, the non-parliamentary wing of the ANC (the NEC) is responsible for deploying Members to the NA as well as other senior positions in various other institutions, with the aim of ensuring that the party's policy directives are implemented correctly.<sup>140</sup> A Member who has been deployed to a senior position is obligated to implement any policy directives taken by the NEC, and should a Member fail to do so, the NEC has the authority to redeploy a Member to another position, or even expel a Member from the party.

As already mentioned, the current incumbent holds office as the Speaker of the NA, and in addition, she is the Chairperson of the ANC NEC. According to the ANC Constitution, the ANC NEC is the highest organ of the

---

<sup>137</sup> Section 47(3) (c) of the Constitution.

<sup>138</sup> Choudhry S *"He had a mandate": The South African Constitutional Court and the African National Congress in a dominant party democracy* (2009) 2 Constitutional Court Review at page 14.

<sup>139</sup> *Ibid.* at page 15.

<sup>140</sup> *Ibid.* at page 14.

organisation and it has the power to lead the organisation.<sup>141</sup> Further to this, the ANC NEC has the power to, *inter alia*:

‘Carry out decisions and instructions adopted at the National Conference, issue and send directives and instructions to the Provinces, supervise ANC organs and governmental caucuses, establish Departments and set up committees, institute disciplinary proceedings against any Member, conclude deployment contracts with public representatives, and recall any public representative.’<sup>142</sup>

The ANC holds the majority of seats in South Africa’s NA, and therefore the Members of the party’s parliamentary wing are entitled to ask the majority of questions during sittings. Choudhry’s observation however goes contrary to the above viewpoint in that the Members seldom do so, as they have been barred by strict party discipline.<sup>143</sup> Should a Member of the ruling party’s parliamentary wing speak out against an adopted directive, or should s/he vote in a manner not reflected on the ANC directive papers, the Speaker may feel obligated to report the Member’s dissent to the ANC’s Chief Whip, who will report back to the ANC NEC. The Speaker may report a Member as it is his or her duty as a Member of the ANC NEC to supervise the ANC governmental caucus. Should the ANC NEC decide to take disciplinary action against a Member, the outcome could lead to redeployment to another area of government. This could be an indication of how not to use cadre deployment advantageously. Apart from the embarrassment of being disciplined, relocating one’s life is highly expensive, time consuming, and is a disruption to one’s family life, all of which could be seen as influential factors in swaying a Member’s opinion during deliberations.

---

<sup>141</sup> Rule 12 of the ANC Constitution.

<sup>142</sup> Rule 12 of the ANC Constitution.

<sup>143</sup> Choudhry S “*He had a mandate*”: *The South African Constitutional Court and the African National Congress in a dominant party democracy*” (2009) 2 Constitutional Court Review at page 11.

### 3.2.4 *The Final Say...*

In *Tlouamma and Others v Mbete, Speaker of the National Assembly of the Parliament of the Republic of South Africa and Another*<sup>144</sup> Goliath J held that ‘there is no legal basis to find that the Speaker cannot continue to hold the position of Chairperson of the National Executive Committee of the ANC as well as that of Speaker.’<sup>145</sup> It is however submitted that there is indeed a legal basis for finding that the Speaker cannot hold the position of Chairperson of the NEC as well as that of Speaker. The basis for such a finding is that South Africa is a dominant party democracy.<sup>146</sup> There is clearly no express Rule barring the Speaker from partaking in party politics and the ruling party has, as it would seem, been able to exploit this *lacuna* in its pursuit to maintain its dominant status by ‘shifting politics into the party and out of the legislature, diminishing the central role of the legislature in national political life.’<sup>147</sup>

It could be argued that the ANC has attempted to maintain its dominant status in the NA by ensuring the successful placement of a senior party loyalist to the office of the Speaker, whose function it is to oversee parliamentary proceedings therein ensuring party Members follow the directives taken by senior leadership. The ruling party has managed to keep its parliamentary Members in check by subjecting them to strict party discipline. Furthermore the ANC has shown that it will not hesitate to summon an elected office holder to its party headquarters, if that person has made a decision which has not been sanctioned by the leaders of the organisation.

In the next section I will evaluate the impartiality of the Speakership as it relates to both the maintenance of order in the NA and a Member’s freedom of expression.

---

<sup>144</sup> Goliath J *supra* at para 140.

<sup>145</sup> Goliath J *supra* at para 144.

<sup>146</sup> Choudhry S “‘He had a mandate’: The South African Constitutional Court and the African National Congress in a dominant party democracy” (2009) 2 Constitutional Court Review at page 33.

<sup>147</sup> *Ibid.* at page 32.



### 3.3 Impartiality and Fairness

The Guide explains that ‘the Speaker is required to act fairly and impartially to ensure that the rights of all parties, including minority parties, are protected.’<sup>148</sup> However, in September 2014 the DA brought a motion of no confidence against the current office holder, Baleka Mbete, on grounds that she is unable to fulfil the role of Speaker in an impartial manner. The DA alleged that she ‘stands in the way of vigorous debate’ and her leadership role in the ANC ‘is the most important disqualifying factor.’<sup>149</sup> According to Seedat it is not uncommon for a Speaker to be accused of political bias and such accusations tend to take place in legislatures all around the world.<sup>150</sup>

In the sections to follow, I will assess controversies surrounding the office of the Speaker in South Africa in an attempt to ascertain whether there currently exists any evidence to suggest that the Speaker is acting unfairly and in a partisan manner in her role as head of the legislature.

#### 3.3.1 *Limiting Members’ Freedom of Expression*

The right to freedom of expression has been included in the Bill of Rights of the Constitution.<sup>151</sup> A Speaker, as the head of the legislative branch of government, has the duty to protect and safeguard every Member’s right of political expression during parliamentary sittings.<sup>152</sup> Any speech made by a Member in the NA is protected by section 58 of the Constitution, Rule 44 of the Rules of the NA, and section 6 of the Act. The Constitution provides Members with special privileges and immunities in performance of their political roles and functions.<sup>153</sup> It states further that Members of the NA, Cabinet Ministers and Deputy Ministers are entitled to freely express themselves in the National Assembly, as well as in their respective committees. Additionally, Members of the NA, Ministers and Deputy Ministers cannot be arrested, imprisoned or held liable for damages resulting from

---

<sup>148</sup> Page 18 of the Guide.

<sup>149</sup> See each individual ground at <https://www.da.org.za/2014/09/opposition-tables-motion-confidence-baleka-mbete>.

<sup>150</sup> Seedat S *et al* “*The South African Parliament in 2015*” 2015 at page 25.

<sup>151</sup> Section 16 of the Constitution.

<sup>152</sup> *Lekota and Another v Speaker, National Assembly and Another* 2012 ZAWCHC 385 at para 11.

<sup>153</sup> Section 58 of the Constitution.

anything that has been said or revealed during the course of a debate taking place in the NA.<sup>154</sup> Currie and de Waal explain that this is an ‘absolute right to freedom of speech.’<sup>155</sup>

A Member’s absolute right to freedom of expression has however been under assault by the Speakership in that Members have been forcibly removed from the NA for making an expression. On 9 September 2015 a Member of the EFF refused to withdraw statements he had made about Deputy President Ramaphosa when asked to do so by the presiding officer. As a result of his refusal to withdraw his statements, the presiding officer ordered parliamentary ‘bouncers’ to forcibly remove the Member of the opposition from the House. Furthermore it is important to note that the Member’s refusal to withdraw the statements did not grossly disrupt the order of the House.

A few years earlier a Member of the NA was suspended from the House for making statements about other Members of Parliament during the course of a debate. An *ad hoc* committee was formed, by the majority of the House, to deal with the matter, and made a recommendation for the Member to be suspended from the House for 15 days. Moreover, the Member was told to issue a written apology to the Assembly and the Members whom she had named during the debate. The Speaker then adopted the committee’s recommendations and suspended the Member from the NA for the recommended period of time. The Member then decided to challenge the resolutions of the House in court by arguing that the majority of the Members of the committee were biased against her and were therefore acting *mala fide*. Additionally, the Member argued that she did not receive a fair hearing before the recommendations were adopted.<sup>156</sup>

The Court in *Speaker of the National Assembly v Patricia De Lille*<sup>157</sup> agreed with the Member’s submissions, and declared that the resolution taken by the NA was invalid.<sup>158</sup> On appeal, the SCA explained that it needed

---

<sup>154</sup> Section 58(1) (b) of the Constitution.

<sup>155</sup> Currie & De Waal “*The New Constitutional and Administrative Law*” 2001 page 352.

<sup>156</sup> *Speaker of the National Assembly v Patricia De Lille* [1999] ZASCA 50 at para 10.

<sup>157</sup> *Speaker of the National Assembly v Patricia De Lille* [1999] ZASCA 50.

<sup>158</sup> Mohamed CJ *supra* at para 11.

to enquire as to whether the NA had the authority to punish or discipline a Member for making a statement which in no way disrupted proceedings.<sup>159</sup> The Court looked to the Constitution as an aid in determining the aforementioned question, and thus it explained that although the Constitution allows for Parliament to formulate rules that temporarily exclude disruptive Members from sittings of Parliament. Suspending a Member for non-disruptive comments made during a debate obstructs a Member's constitutionally protected right to freedom of expression in the NA.<sup>160</sup> The court held that the NA did not have any constitutional authority to suspend a Member from the NA for making comments during the course of a debate. For a Member to be suspended, the comments must have disrupted the proceedings of the House.<sup>161</sup>

On 26 June 2015 the rules committee adopted an interim arrangement to deal with ongoing disruptions in the NA. A majority of the parties in the rules committee agreed that it needed to address the issue of disruptions because they were beginning to obstruct the NA from carrying out its functions.<sup>162</sup> For the most part I agree with the committee on the adoption of interim measures to deal with disruptions, however, I do not agree with the presiding officer's decision to invoke the interim Rule against the Member of the EFF on 9 September 2015. The rules committee created the interim arrangement to deal with disruptions of the House during sittings, however, the EFF Member's statement was firstly, not grossly disruptive of the proceedings of the House, and secondly, the presiding officer asked the Member to withdraw his statement only once the House had completed the business of the day.

Therefore I would argue that the decision of the presiding officer to remove the Member from the Chamber, despite it having no adverse consequences on the day's proceedings, is out of kilter with the ruling of the SCA in the *De Lille* matter. The SCA explained that the NA could not discipline a Member for statements made which did not disrupt proceedings

---

<sup>159</sup> Mohamed CJ *supra* at para 17.

<sup>160</sup> Mohamed CJ *supra* at para 20.

<sup>161</sup> Mohamed CJ *supra* at para's 30 and 31.

<sup>162</sup> Disruptions during National Assembly proceedings: proposals, 26 June 2015.

because as Mahomed CJ explained, to do so would be an infringement upon a Member's constitutionally protected right to freedom of expression in the NA.<sup>163</sup> Therefore, when taking into account the committee's reasons for implementing the interim arrangement, as well as the decision in the *De Lille* matter, it is apparent that the presiding officer erred in ordering that a Member be forcibly removed from the Chamber for expressing a view.

Whilst it is recognised that the power of the Speaker to order the withdrawal of a Member is essential to maintaining order in the House, the Guide states that this power should 'be used sparingly'.<sup>164</sup> The presiding officer seems to have been hasty in her decision to invoke the interim Rule against the opposition Member. Her action suggests that she was attempting to use the interim Rule as a way of 'muzzling' a Member of the opposition. This is a matter of concern because a Member has an absolute right to freedom of expression in the NA. Therefore no presiding officer should attempt to silence any Member of the NA, unless that Member is guilty of grossly disrupting the proceedings of the House.

### **3.3.2 House Descending into Chaos as a Result of the Speaker's Actions**

Over the past year the Speaker has struggled to maintain order in the NA and on numerous occasions the House has descended into chaos - at times as a direct result of the Speaker's own actions.

On 18 June 2015, during a sitting of the House, an opposition Member of Parliament raised a point of order in response to a question directed at President Zuma by a fellow opposition Member. The Speaker chose to ignore the point of order brought by the opposition Member, but instead recognised a point of order by the Chief Whip of the majority party. A few moments later, the Speaker chose to recognise another Member's point of order (at this juncture she still had not recognised the initial point of order raised by the opposition Member). The Member of the opposition party, who raised the initial point of order, then proceeded to ask the Speaker to recognise his point of order. Furthermore, to address him as 'an equal Member of this

---

<sup>163</sup> Mohamed CJ *supra* at para 29.

<sup>164</sup> Page 20 of the Guide.

House [sic].’ This caused the House to descend into chaos which bore a striking resemblance to a battle ground rather than a place of reputable political exchange. The Speaker responded to the chaos by suspending proceedings for an hour whilst she met with the Whips in the secretary’s office.

Moreover, when proceedings resumed, a Member of the opposition party raised a point of order and whilst doing so, a Member of the ruling party shouted across the House that he is ‘talking nonsense.’ When the opposition Member asked the Speaker to intervene, by asking the Member of the ruling party to withdraw the statement, the Speaker replied that she had not heard the comment, and therefore she refused to ask the Member to withdraw the statement. The Speaker’s refusal led to further disruptions, and in an attempt to rescue the situation from descending into chaos, the Chair eventually asked the Member of the ruling party whether she had indeed directed the statement toward the Member of the opposition. To which the Member of the ruling party replied ‘yes I did, I withdraw’. At this point Members’ tempers were flaring because the opposition felt that the Speaker was acting in a biased way by not naming the Member of the ruling party for her unruly behaviour. At this point, Members of the EFF had lost all interest in proceedings and proceeded to chant ‘Pay back the money! Pay back the money!’ The Speaker had no choice but to prematurely adjourn proceedings for the day. It could be suggested that had the Speaker recognised the Member’s initial point of order, a breakdown in the decorum may have been avoided and the NA could have continued with the order of the day.

### ***3.3.3 Speaker Making Disparaging Remarks about Opposition Parties***

These incidents seem to suggest that the Speaker and presiding officers have had difficulty in performing the functions of the office in a fair and impartial manner. It could be suggested that the Speaker has attempted to use her role in office to undermine the image of the opposition parties in the NA.

In *Tloulama* the applicants criticised the current office holder for making ‘disparaging remarks’ about the EFF outside of the NA. The Speaker

later withdrew one of the remarks and apologised to the EFF by issuing a media statement.<sup>165</sup> It is however submitted that the Speaker should not be making vexatious comments about political parties who are present in the NA. Although her apology was admirable, her actions have portrayed negatively upon the office as well as the NA. A Speaker must work to maintain the confidence of all the parties in the NA and in making disparaging remarks about opposition parties inside or outside the precincts of Parliament, does not instil this confidence. This lack of confidence could lead Members to no longer have trust in the Speaker. The chaos seen in Parliament reflects this lack in confidence of the Members toward the Speaker.

### **3.4 Rules Surrounding the Speakership**

#### **3.4.1 Introduction**

As was previously stated, the Rules do not contain a specific provision for the roles, duties and functions of the office of the Speaker and the Deputy Speaker. There are however various provisions contained in the Rules which provide for the functions and powers of the Speakership. In this section I will assess a proposed Draft Rule relating to the general responsibilities of the Speaker; discuss a Rule regarding motions of no confidence in the President; and analyse a proposed draft Rule empowering a presiding officer to order the forcible removal of a Member from the Chamber.

#### **3.4.2 Draft Rule 17A**

On 4 February 2015 a Report<sup>166</sup> (the Report) was concluded by the subcommittee on review of the Assembly Rules. The purpose of the Report was to propose possible amendments to Chapters one through nine of the Rules. The Report by the subcommittee to the rules committee states that it is necessary for the NA to continuously reassess its procedures and parliamentary practices therein ensuring that the South African legislature continues to carry out its institutional obligations.<sup>167</sup> The Report includes a

---

<sup>165</sup> Goliath J *supra* at para 35.

<sup>166</sup> Report of the subcommittee on review of the assembly rules to the rules committee on proposed amendments to the NA Rules: Chapters 1 to 9. Version dated 4 February 2015.

<sup>167</sup> *Ibid.* at page 1.

proposed amendment to the Rules in the form of a Rule setting out the functions and powers of the office of the Speaker.

The proposed draft Rule reads as follows:

‘17 A General authority and responsibility of Speaker

(1) In exercising the authority of the Speaker, as provided for in [the] Constitution and legislation and Rules of Parliament, the Speaker must:

(a) ensure that the National Assembly provides a national forum for public consideration of issues, by passing legislation and by scrutinizing and overseeing executive action in accordance with section 42(3) of the Constitution;

(b) ensure that all parties represented in the National Assembly participate effectively and efficiently in the proceedings of the Assembly and its committees and forums and facilitate public involvement in the processes of Parliament in accordance with sections 57 and 59 of the Constitution;

(c) observe and promote compliance with the principles of co-operative governance and intergovernmental relations in accordance with Chapter 3 of the Constitution; and

(d) whenever possible, consult with relevant office-bearers and structures within Parliament to achieve the efficient and effective functioning of Parliament in a transparent and accountable manner.

(3) the Speaker shall maintain and preserve the order of and the proper decorum in the House, and uphold the dignity and good name of the House.

(4) the Speaker is responsible for the strict observance of the Rules of the House and shall decide questions of order and practice in the House.

(5) the Speaker shall act fairly and impartially and ensure that the rights of all parties are protected.’<sup>168</sup>

Rule 17A is clearly an attempt by the Rules Committee to clarify the authority and responsibilities of the Speaker in the South African NA. However, the list of responsibilities specified in 17(A) (1) appears to be closed. This could be a potential problem in the future because of the logistical burden placed on the committee each time it decides to amend the Rules by inserting a further responsibility. Any amendment process is costly and a waste of parliamentary time and resources. Therefore, it would be more favourable for Rule 17A to include a ‘catch-all’ provision for the eventuality that a new obligation is created. An example of a possible ‘catch-all’ type of provision is as follows:

‘When exercising any power or performing any function, the Speaker, Deputy Speaker, or any presiding officer, must at all times comply with the spirit and purport of the Constitution of the Republic of South Africa.’

I would argue that a ‘catch-all’ provision, such as the above, is necessary as it reaffirms the point that all Members of government must ensure their conduct is in accordance with the ethos of the Constitution.

Whatever, it is submitted that the proposed Rule is a step in a positive direction as it codifies a number of universally acceptable duties that are associated with the office of the Speaker. Furthermore, the proposed Rule provides clarity on what is expected of a person when exercising the powers of office.

### **3.4.3 Draft Rule 53A**

The rules committee of the NA has been considering an amendment to the Rules to address continuous disruptions taking place within the Chamber. Draft Rule 53A allows for the Speaker, or presiding officer to call upon the parliamentary protection services to remove a Member from the precincts of Parliament, if a Member is ordered to withdraw from the Chamber because s/he commits a serious disturbance, and subsequently

---

<sup>168</sup> *Ibid.* at page 14.



s/he refuses to adhere to the order of the Speaker.<sup>169</sup> Additionally, the draft Rule provides that whenever a Member is removed from the House, the Speaker must refer the circumstances of the removal to a multi-party committee for consideration.<sup>170</sup>

The rules committee met on 16 September 2015 to consider the powers and functions of the new multi-party committee. It was agreed by all the Members of the rules committee that a new committee should be formed. However, there was a disagreement between Members of the ruling party and opposition Members 'on the ability of the new committee to examine and review the original ruling of the presiding officer which gave rise to the removal of the Member in question.'<sup>171</sup> The ANC stated that the new committee should not be able to review the rulings of the presiding officer. An ANC Member argued that rulings by the Speaker or a presiding officer could not be reviewed as this did not happen in Parliament. The opposition parties held a different viewpoint on the matter, they argued that the committee should be able to review the original ruling by the presiding officer. They held that Draft Rule 53A (12) makes provision for the consideration of the circumstances leading up to the Member's removal, and if the committee was not able to review the original ruling, the Member who was removed would have to refer the matter to the courts to review the decision.

The view of the opposition parties seems more consistent with the general framework of impartiality within which the Speaker ought to operate. Therefore, I would argue that the multi-party committee should be granted the power to review an original decision taken by the presiding officer in order to ensure that Rule 53A does not get abused during sittings. It is important for a committee to be able to review the original decision so as to hold a Speaker accountable for his or her actions, thereby deterring a Speaker from invoking the Rule as an attempt to silence opposition Member's during sittings. The power to remove a Member from the House is an extremely

---

<sup>169</sup> Rule Amendments agreed to by the National Assembly on 30 July 2015.

<sup>170</sup> Draft Rule 53A (12).

<sup>171</sup> Rules of the National Assembly Committee Meeting, 16 September 2015, accessed via <https://pmg.org.za/committee-meeting/21506/>.

effective mechanism and, therefore, it is vital for a Member to be able to review a decision in respect of procedural fairness.

Although I agree with the opposition on the point of holding the Speaker accountable for his or her actions, I do not support the proposed Rule in its entirety for a number of reasons. Firstly, the Rule allows for the Speaker to order the removal of Members from the NA. These Members have been democratically elected to represent the interests of a portion of the electorate, and should a Member therefore be removed from a sitting, that Member would miss out on any remaining business of the day. Furthermore, the interests of his or her supporters would not be represented in any further deliberations - this is at odds with deliberative democracy. Secondly, the Rule has room to be abused by the Speaker or the presiding officer in that it may be invoked to silence a Member of the opposition. Already we have witnessed it being incorrectly invoked by a presiding officer against a Member of the opposition. The Rule is qualified by disruptive behaviour of a Member, however, recently a Member was ordered to be forcibly removed for refusing to withdraw statements that in no way disrupted the proceedings of the NA.

#### **3.4.4 Rule 102A**

As previously mentioned, under South Africa's constitutional democracy, the legislature acts as an oversight mechanism on the executive. The Cabinet is answerable to the legislature, and therefore serves as an important check on the executive. The Constitution grants the legislature the power to remove the President and/or his Cabinet, by adopting a motion of no confidence.<sup>172</sup> This mechanism of control over the executive stems from the fact that the executive is not elected by the voters, and therefore, it should not be afforded the opportunity to exercise its power without the support of the directly elected NA.<sup>173</sup> The right, as contained in the Constitution, is not only restricted to minority parties. Members of the ruling

---

<sup>172</sup> Section 102 of the Constitution.

<sup>173</sup> Currie & De Waal, "*The New Constitutional and Administrative Law*" 2001 at page 233.

party also have the right to bring a notice of motion against the President and/or the Cabinet.<sup>174</sup>

In *Mazibuko v Sisulu and Another*<sup>175</sup> the Constitutional Court dealt with a constitutional challenge to the Rules of the NA because they failed to provide for an adequate procedure relating to motions of no confidence as envisaged by section 102 of the Constitution.<sup>176</sup> Prior to the hearing of this matter, the Court requested the Speaker to file a report on the progress of 'ensuring that motions of no confidence [in the President and the Cabinet] are appropriately provided for in the Rules.'<sup>177</sup> Moseneke DCJ, writing for the majority, concluded that Chapter twelve of the Rules was inconsistent with section 102 (2) of the Constitution. Therefore, they were invalid as they failed to sufficiently provide for a procedure that allows for a Member to bring a motion of no confidence against the President and the Cabinet.<sup>178</sup> Additionally, Moseneke DCJ stated that the declaration of constitutional invalidity was to be suspended for six months, therein providing the NA with an opportunity to correct the defect.<sup>179</sup>

Post *Mazibuko*, the Rules of the NA have been amended to include a procedure regarding motions of no confidence in terms of section 102 of the Constitution. Section 102A of the Rules states the following:

'102A. Motions of no confidence in terms of section 102 of the Constitution:

- (1) A member may propose that a motion of no confidence in the Cabinet or the President in terms of section 102 be placed on the Order Paper.
- (2) The Speaker must accord such motion of no confidence due priority and before scheduling it must consult with the Leader of the Government Business and the Chief Whip of the Majority Party.

---

<sup>174</sup> Section 102 of the Constitution.

<sup>175</sup> *Mazibuko v Sisulu and Another* 2013 (6) SA 249 (CC).

<sup>176</sup> Moseneke DCJ *supra* at para 38.

<sup>177</sup> Moseneke DCJ *supra* at para 68.

<sup>178</sup> Moseneke DCJ *supra* at para 82.

<sup>179</sup> Moseneke DCJ *supra* at para 82.

- (3) The motion must comply, to the satisfaction of the Speaker, with the prescripts of any relevant law or any relevant rules and orders of the House and directives and guidelines recommended by the Rules Committee and approved by the House, before being placed on the Order Paper, and must include the grounds on which the proposed vote of no confidence is based.
- (4) The Speaker may request an amendment of or in any other manner deal with a notice of no confidence motion which contravenes the law, rules and orders of the House or directives and guidelines approved by the House.
- (5) After proper consultation and once the Speaker is satisfied that the motion of no confidence complies with the aforementioned prescribed law, rules, orders, directives or guidelines of the House, the Speaker must ensure that the motion of no confidence is scheduled, debated and voted on within a reasonable period of time given the programme of the Assembly.
- (6) The debate on a motion of no confidence may not exceed the time allocated for it by the Speaker, after aforesaid consultation process.
- (7) If a motion of no confidence cannot reasonably be scheduled by the last sitting day of an annual session, it must be scheduled for consideration as soon as possible in the next annual session.
- (8) Rules 95, 97 and 101 do not apply to motions of no confidence in terms of this Rule.<sup>180</sup>

The Speaker of the NA exercises a discretionary authority over the motion of no confidence process, in that he or she has the authority to decide whether a motion of no confidence in the President is debated in the NA. The Rule provides that the Speaker may only schedule a motion once the Leader

---

<sup>180</sup> Rule 102A.

of the Government Business and the Chief Whip of the Majority Party have been consulted.<sup>181</sup> The Rule provides further that, 'the motion must comply, to the satisfaction of the Speaker... before being placed on the order paper...'<sup>182</sup> The Rule continues to allow the Speaker discretion when deciding whether a motion will be scheduled for debate. It states further that a motion of no confidence may be scheduled only 'once the Speaker is satisfied' that the motion complies with any relevant formalities. Further to this the Rule gives the Speaker the discretion to set a time limit for the debate on a motion of no confidence.<sup>183</sup>

Amended Rule 102A places a great deal of power within the ambit of the Speaker regarding motions of no confidence in the President. Assuming that an incumbent was aiming to ingratiate him- or herself with the bosses of his or her political party, s/he may bar the motion from being debated in the NA, by arguing that it does not comply with his or her satisfaction. Furthermore, if a Speaker decided not to block the motion, he or she still has the power to decide the amount of time allocated toward the motion for debate in the NA. Therefore, if a Speaker does not support a motion brought against the President, s/he has the power to stymie the debate by allocating an unreasonably short amount of time for debating the motion.

The Constitution bestows upon all parties of the NA the right to bring a motion of no confidence against the President and/or the Cabinet. Given the language of Rule 102A, it is argued that the Rule is at odds with the Constitution because it allows the Speaker to decide whether the motion should be scheduled or not. As South African history has dictated, a Speaker will always belong to the majority party in the NA, and therefore the majority party will always have a substantial amount of authority in deciding whether the motion should be scheduled or not. In South Africa's democratic political climate it makes no sense for the Speaker to wield the discretion in deciding whether the motion should be scheduled and debated in the NA because of our Speakers close allegiances to their political party. It could be argued that

---

<sup>181</sup> Rule 102A (2).

<sup>182</sup> Rule 102A (3).

<sup>183</sup> Rule 102A (5) - (6).

the Rule needs to be re-examined in that it places less influence within the ambit of the Speaker.

## CHAPTER FOUR

### Proposed Solutions to Remedy the Problems in South Africa: Lessons from Abroad

#### 4.1 Introduction

When considering ways to strengthen and improve the office of the Speaker in South Africa, the first port of call is to usually suggest that the Speaker must cut ties with the political party to which s/he is affiliated- as is the case in the House of Commons in the United Kingdom. I am however not convinced that this is the only way of improving and strengthening the office of the Speaker. The office is capable of being improved and strengthened by creating and implementing new standing rules, amending existing procedures and through the development of new customs. As was previously mentioned, the office of the Speaker and the NA function in symbiosis. Therefore, it is submitted that should the office be enhanced and strengthened it would have a positive effect on the development of the NA *in toto*. This Chapter will set out to identify the different standing rules, processes and procedures which have been implemented by foreign legislatures in an attempt to strengthen and improve the Speaker's office. This Chapter will then discuss the foreign measures and attempt to draw conclusions as to whether it would be favourable for the NA to adopt a similar process in pursuit of enhancing the office.

#### 4.2 A Compromised Solution

In an article on the impartiality of the Speaker, De Vos asks two important questions: should the Speaker of the NA be completely impartial and should the Speaker be obligated to resign as a Member of his or her political party upon being appointed to the office.<sup>184</sup> These are two relevant questions to be cognisant of when assessing the *status quo* of the Speakership in South Africa.

---

<sup>184</sup> De Vos P "The Speaker's dilemma" 19 September 2014 accessed via the Daily Maverick at <http://www.dailymaverick.co.za/opinionista/2014-09-19-the-speakers-dilemma/#.Vfv-Yvmqqko>.

In the South African context one cannot expect a Speaker to resign from his or her political party, as is the case in the House of Commons, because the South African electoral system is based on a closed list proportional representation system. This essentially means that the political party owns the Speaker's seat in the NA. The Speaker therefore needs to remain a Member of a party in the NA in order to retain his or her membership of Parliament. The Constitution allows for a Member to defect from his or her political party and join another party in the NA, however, given the current political climate in South Africa it seems highly unlikely that a Member belonging to the ruling party would defect to one of the smaller opposition parties. It is further suggested that it would be unfair to require a Speaker to quit his or her political party. One needs to remember that the Speaker is a politician who has dedicated many valuable years to the pursuit of climbing the political ladder in his or her respective party. It would thus be unreasonable and somewhat selfish to expect a candidate to undo all their hard work simply because of their appointment as Speaker.

Therefore, the next proposal is somewhat of a compromise. It is suggested that Members of the NA who are top-ranking party leaders must be excluded from being nominated by other Members of the House during the selection process. For practical purposes, the Chief Justice could release a form to all Members of the NA (prior to their first meeting of the NA) stating the names of Members who have been excluded from the selection process (i.e. senior party leaders and Cabinet Ministers). The Rules of the NA would be the appropriate forum for such a standing rule as above, which regulates a process regarding said exclusions.

In the Canadian House of Commons a Speaker-elect is not expected to resign as a Member of his or her political party. However, Members of the House who are Ministers or party leaders do not qualify for the election as Speaker. The Standing Orders of the Canadian House of Commons<sup>185</sup> state that 'no Minister of the Crown, nor party leader, shall be eligible for election to

---

<sup>185</sup> Standing Orders of the House of Commons – Consolidated versions as of October 20, 2015.



the Office of the Speaker.<sup>186</sup> Laundry explains that in the early stages of the Canadian Speakership, ‘the government regarded the Speaker as one of their own and little was done to boost his authority or encourage practices which would assist him in gaining the confidence of the opposition.’<sup>187</sup> The aforementioned standing order seems to indicate that the Canadian House of Commons recognised that there was a need to enhance the independence of the office in order to achieve cross-party support for the Speaker in the House. One identifiable way of achieving cross-party support, as well as improving the independence of the Speakership, is to ensure that a senior party leader is not capable of being appointed to the office - thereby potentially negating any long term political affiliation toward that particular party.

In response to the second question posed by De Vos, it is suggested that a Member should not be obliged to resign from their political party upon appointment as Speaker, provided that senior party leaders must be excluded from running for office.

#### **4.3 Making the Speaker Immune to the ‘Anti-defection’ Clause**

Under South Africa’s closed list proportional representation electoral system it is difficult for a Speaker to refrain from acting in a partisan manner as s/he is nominated to the NA by his or her political party. The Speaker thus remains a Member of his or her political party even when holding office. If a Speaker resigns or is expelled from the party that nominated him or her to the NA, s/he will no longer be a Member of the Assembly, and therefore s/he will no longer hold office as Speaker. As was previously argued, what this may suggest is that a Speaker could be more inclined to show bias toward his or her political party out of fear of being disciplined and possibly removed from the NA for not toeing the party line.

It has been argued that the anti-defection clause is undemocratic because it stymies freedom of speech as well as freedom of association.<sup>188</sup>

---

<sup>186</sup> Standing Order 5.

<sup>187</sup> Laundry P “*The Office of Speaker in the Parliaments of the Commonwealth*” 1984 at page 111.

<sup>188</sup> Steytler N “*Parliamentary democracy- the anti-defection clause*” 1997 Law Democracy and Development pp 221-231 at page 221.

However in the *First Certification*<sup>189</sup> judgment, the Constitutional Court explained that the anti-defection clause is consistent with the Constitutional Principles because it ‘obliges members of a party, who are elected by virtue of the inclusion of their names on the party’s list, to remain loyal to that party.’<sup>190</sup> I do not reject the reasoning of the Court *vis-à-vis* an ordinary Member of Parliament. I do however disagree with the Court’s reasoning when considering the Speaker. The Guide indicates that although the Speaker is affiliated to a political party, s/he ‘is required to perform the functions of that office fairly and impartially in the interests of the Assembly and Parliament.’<sup>191</sup> The Guide has thus clearly placed an obligation on an incumbent to perform the functions of the office in a manner which furthers the interests of the NA and Parliament. It is however difficult to imagine how a Speaker would be able to protect the rights and interests of all parties when s/he is susceptible to strict party discipline.

In 1985 India’s Constitution<sup>192</sup> was amended so as to provide for an ‘anti-defection’ clause. The clause states that a Member of Parliament or a Member of the State Legislature would be disqualified on grounds of defection should they resign from their political party, or if they voted in contravention of a directive issued by senior party leaders.<sup>193</sup> Interestingly the Indian Constitution contains a provision that exempts the Speaker and the Deputy Speaker of the House of the People (“Lok Sabha”) from being disqualified on the ground of defection.<sup>194</sup> Thus a Speaker or Deputy Speaker may sever ties with their political party, and in so doing they will not be disqualified from the Lok Sabha and will maintain their position as office holder.

It is submitted that the Constitution and the Rules of the NA must be amended so as to include a provision which makes the Speaker immune to the ‘anti-defection’ clause, as is the case in India. The proposed amendment could be similar to the provision contained in the Indian Constitution,

---

<sup>189</sup> *Certification of the Constitution of the Republic of South Africa* 1996 (4) SA 744 (CC).

<sup>190</sup> *Supra* at para 183.

<sup>191</sup> The Guide at page 17.

<sup>192</sup> The Constitution of India.

<sup>193</sup> Section 2 of the Tenth Schedule of the Constitution of India.

<sup>194</sup> Section 5 of the Tenth Schedule of the Constitution of India.

however, the South African provision must include a sub-provision that exempts a Member who has been expelled from the political party who nominated him or her to the NA barring certain exceptions such as expulsion for corrupt activity or gross insubordination. Therefore, it is suggested that the provision should reflect as follows:

‘A person elected to the office of the Speaker, or Deputy Speaker of the National Assembly, shall not lose membership in the NA –

- (a) If s/he is expelled from the party that nominated him or her as a Member of the National Assembly except in instances of corrupt activity and/ or gross insubordination; or
- (b) If s/he resigns from the party that nominated him or her as a Member of the National Assembly’

It is therefore argued that the independence of the Speaker’s office will be strengthened by amending the Constitution and the Rules with reflection on the above proposed amendment. It is further submitted that the office holder will no longer have to fear removal for not following the directives of senior party leaders thus leading to greater impartiality. Moreover, immunity from the ‘anti-defection’ clause may assist in improving relations between the Speaker and the opposition parties, as the Speaker would be able to promote the interests of all the parties during debates and question and answer sessions without his or her actions being perceived to support rival political parties. Finally, the amendment may assist in protecting a Speaker from accusations of bias brought by opposition Members. This is a negative political tactic adopted by opposition parties to disrupt proceedings of the Assembly, and by strengthening the independence of the office, opposition Members may resist the urge to accuse a Speaker on such a ground.

#### **4.4 Speaker Election Procedure**

The election procedure pertaining to the Speaker and Deputy Speaker of the NA is not contained in the Rules of the NA but rather the Constitution.<sup>195</sup> The election procedure as set out in the Constitution has provided the NA with a satisfactory foundational process. The use of a secret

---

<sup>195</sup> Schedule 3 Part A of the Constitution.

ballot system is commendable as it reflects a modern democratic election process. However, it is suggested that the NA must establish a committee to review and possibly amend certain aspects regarding the current election procedure in order to strengthen the independence of the office.

A procedure committee exists in the House of Commons in the United Kingdom and its task is to oversee parliamentary reform debates. Between the years 2000 and 2001 the committee reviewed the election process pertaining to the Speaker in the House of Commons. The committee reviewed the process by, *inter alia* creating a questionnaire for Members to answer; hearing oral evidence from parliamentarians and analysing methods utilised by other legislatures.<sup>196</sup> It is therefore submitted that there is a need for the South African NA to instruct the rules committee to review the current election procedure by making use of similar processes as that of the procedure committee in the House of Commons. In the paragraphs to follow I will analyse methods used by foreign legislature's *vis-à-vis* the Speaker selection process. In so doing I will analyse procedural reforms that may improve and strengthen the office of the Speaker.

#### **4.3.1 Add an Election Procedure to the Rules of the NA**

First and foremost, the election procedure as provided for by the Constitution must be included in the Rules of the National Assembly. It is not uncommon for standing rules to contain an election procedure pertaining to the presiding officers. Both the Standing Orders of the House of Commons<sup>197</sup> in the United Kingdom and the Standing Orders of the House of Commons<sup>198</sup> in Canada contain comprehensive election procedures *vis-à-vis* the Speaker and Deputy Speaker.

As it stands, if the NA wanted to amend the voting procedure pertaining to the Speaker, the Constitution dictates that any amendment to Schedule three would need to be adopted in terms of the process as

---

<sup>196</sup> Armitage F "From elite control to democratic competition: Procedural reform and cultural change in UK House of Commons Speakership elections" 2012 British Politics, Vol.7 (2), pp 135-162 at page 150.

<sup>197</sup> Standing Orders of the House of Commons – Public Business 5 May 2015.

<sup>198</sup> Standing Orders of the House of Commons – Consolidated versions as of October 20, 2015.

provided for in the text of the Constitution.<sup>199</sup> The process is extremely intricate and relies heavily on a high threshold of votes in order to pass an amendment to an item contained in the Constitution. It is therefore submitted that it would be more favourable for the procedure to be contained in the Rules of the NA for the following reasons. Firstly, the procedure set out for amending a procedure contained in the Rules of the NA is less stringent than the process provided for in the Constitution. It would be less burdensome for the NA to carry out amendments to its own procedures as opposed to procedures provided for in the Constitution. All that is simply required is a vote in favour by the majority of Members of the rules committee in order to adopt a proposed amendment.<sup>200</sup> Secondly, the Constitution provides that the NA may determine its own procedures and make its own rules pertaining

---

<sup>199</sup> Section 74 provides as follows:

(1) Section 1 and this subsection may be amended by a Bill passed by— (a) the National Assembly, with a supporting vote of at least 75 per cent of its members; and (b) the National Council of Provinces, with a supporting vote of at least six provinces. (2) Chapter 2 may be amended by a Bill passed by— (a) the National Assembly, with a supporting vote of at least two thirds of its members; and (b) the National Council of Provinces, with a supporting vote of at least six provinces. (3) Any other provision of the Constitution may be amended by a Bill passed— (a) by the National Assembly, with a supporting vote of at least two thirds of its members; and (b) also by the National Council of Provinces, with a supporting vote of at least six provinces, if the amendment— (i) relates to a matter that affects the Council; (ii) alters provincial boundaries, powers, functions or institutions; or (iii) amends a provision that deals specifically with a provincial matter. (4) A Bill amending the Constitution may not include provisions other than constitutional amendments and matters connected with the amendments. (5) At least 30 days before a Bill amending the Constitution is introduced in terms of section 73(2), the person or committee intending to introduce the Bill must— (a) publish in the national Government Gazette, and in accordance with the rules and orders of the National Assembly, particulars of the proposed amendment for public comment; (b) submit, in accordance with the rules and orders of the Assembly, those particulars to the provincial legislatures for their views; and Chapter 4: Parliament 39 (c) submit, in accordance with the rules and orders of the National Council of Provinces, those particulars to the Council for a public debate, if the proposed amendment is not an amendment that is required to be passed by the Council. (6) When a Bill amending the Constitution is introduced, the person or committee introducing the Bill must submit any written comments received from the public and the provincial legislatures— (a) to the Speaker for tabling in the National Assembly; and (b) in respect of amendments referred to in subsection (1), (2) or (3)(b), to the Chairperson of the National Council of Provinces for tabling in the Council. (7) A Bill amending the Constitution may not be put to the vote in the National Assembly within 30 days of— (a) its introduction, if the Assembly is sitting when the Bill is introduced; or (b) its tabling in the Assembly, if the Assembly is in recess when the Bill is introduced. (8) If a Bill referred to in subsection (3)(b), or any part of the Bill, concerns only a specific province or provinces, the National Council of Provinces may not pass the Bill or the relevant part unless it has been approved by the legislature or legislatures of the province or provinces concerned. (9) A Bill amending the Constitution that has been passed by the National Assembly and, where applicable, by the National Council of Provinces, must be referred to the President for assent.

<sup>200</sup> Rule 164 of the Rules of the NA.

to its business.<sup>201</sup> However, amending a procedure as contained in the Constitution is reliant on a number of conditions being met – one of which being the President assenting to the proposed amendment. Therefore, as it stands the NA is not able to determine its own procedures as an amendment to the Speaker's election procedure is reliant on approval by the President of the Republic.

#### **4.3.2 Amend the Current Nomination Procedure**

According to the current election procedure, a candidate must be nominated by two Members of the NA to qualify as a candidate to run for election to the office of the Speaker.<sup>202</sup> In an attempt to strengthen the office by way of amending a procedural aspect, it is submitted that the nomination procedure must be amended to require that a person's candidature must be supported by at least 15 Members of the NA, five of whom must belong to political parties other than the candidate's own party. This proposed process could assist in ensuring that the Speaker-elect has the support from a range of parties in the NA and not just the party to which s/he is politically aligned.

A similar process has been adopted by the House of Commons in the United Kingdom. The Standing Orders of the House of Commons<sup>203</sup> state that a candidate must be nominated by no fewer than twelve Members and no more than 15 Members, of which three of those Members must be elected to the House as Members of other political parties.<sup>204</sup> In a committee publication of the House of Commons procedure committee it was explained that it was favourable for a candidate to receive sponsorship from three Members belonging to other political parties, 'in order to demonstrate cross-party support.'<sup>205</sup> Furthermore, it was argued that a candidate must receive sponsorship from 15 Members in order to run for election to office.<sup>206</sup>

It is pertinent for a Speaker-elect to have cross-party support in the NA as it is his or her job to maintain order amongst all the Members whilst the

---

<sup>201</sup> Section 57(1) (b) of the Constitution.

<sup>202</sup> Item 3 of Schedule 3 Part A of the Constitution.

<sup>203</sup> Standing Orders of the House of Commons – Public Business 5 May 2015.

<sup>204</sup> Standing Order 1B of the United Kingdom House of Commons Standing Orders.

<sup>205</sup> HC 1573 5<sup>th</sup> Report – 2010 elections for positions in the House. House of Common Procedure Committee Dated: 31 October 2011 at para 10.

<sup>206</sup> *Ibid.* at para 9.

House is in sitting. It is vital that all parties display a sense of confidence in an office holder so that s/he is able to carry out the functions of the office in an effective manner and allowing less room for disruption. Based on the evidence of *Chapter Three* it is suggested that the current incumbent does not enjoy cross-party support, and this has led to a situation whereby the NA has on many an occasion been unable to carry out its legislative duties, due to it descending into chaos as a result of Members not respecting the current office holder. Furthermore, it seems as though the opposition parties are not supportive of the current Speaker's dual role as office holder and party Chairperson. These objections are of particular importance when one considers South Africa's current political climate and especially when considering the dominant party argument as set out in *Chapter Three*.

It is therefore argued that all Members of the NA must be given an equal opportunity to express whether or not they support the nomination of a certain candidate. Thus, the current nomination procedure must be amended so as to allow for a wider range of Members to approve the nomination of a particular Member. The amended process may achieve respect for the Speaker-elect from all parties within the NA. Bach explains that if Members of an assembly do not have mutual respect for each other, 'their assembly is doomed to failure.'<sup>207</sup> Thus by adopting a nomination process such as the aforementioned, Armitage believes that 'it is entirely conceivable that, in the future, an MP who is popular and respected across the House will be persuaded to stand and be carried into the chair on a tidal wave of cross-party support' which may be in further support of Bach's explanation.<sup>208</sup> This outcome would be most favourable in South Africa especially when considering the lack of cross-party support for the current office holder.

#### **4.5 Speaker and Deputy Speaker**

Armitage explains that the House of Commons in the United Kingdom is of the opinion that 'the principle of Speaker impartiality is protected by

---

<sup>207</sup> Bach S "*Rules of Procedure for National Assemblies*" 2008 Crawford School of Economics and Government, the Australian National University at page 1.

<sup>208</sup> Armitage F "From elite control to democratic competition: Procedural reform and cultural change in UK House of Commons Speakership elections" 2012 *British Politics*, Vol.7 (2), pp 135-162 at page 155.

ensuring that one party does not monopolize the office.<sup>209</sup> Thus in order to maintain a political equilibrium, the House of Commons elects one Deputy Speaker (First Deputy Chairman) from the Speaker's side of the House and two Deputy Speakers (the Chairman of Ways and Means and the Second Deputy Chairman) from the opposition.<sup>210</sup> Upon further investigation it was established that Greece has also set out to achieve multi-partisan representation *vis-à-vis* the Speakership. In the Hellenic Parliament there are seven Deputy Speakers who assist the Speaker in carrying out the functions and duties of the office. The Standing Orders of the Hellenic Parliament dictate that the first three Deputy Speakers must belong to the governing party. The fourth Deputy Speaker must belong to the main opposition party, the fifth Deputy Speaker must belong to the second biggest opposition party, the sixth Deputy Speaker to the third biggest opposition party and the seventh Deputy Speaker must belong to the fourth largest opposition party.<sup>211</sup>

South Africa's Constitution and the Rules of the NA state that at the first sitting of the NA, Members must elect one of its Members as Speaker and another Member as Deputy Speaker.<sup>212</sup> Additionally, the Rules of the NA state that the House must elect three of its Members as House Chairpersons (House Chairperson: Committees; House Chairperson: International Relations; House Chairperson: Internal Arrangements).<sup>213</sup> It is argued that the aforementioned provisions must be reviewed and possibly amended so as to include an item stating that if a Speaker-elect is a Member of the majority party, candidates for the position of the Deputy Speaker must be drawn from a pool of opposition Members. In other words if the Speaker is a Member of the ruling party, the Deputy Speaker must be a Member of an opposition party. The amendment could also provide for a situation in the reverse, thus if the Speaker-elect is a Member of an opposition party the Deputy Speaker must be a Member of the majority party. Furthermore in

---

<sup>209</sup> Armitage F "From elite control to democratic competition: Procedural reform and cultural change in UK House of Commons Speakership elections" (2012) British Politics, Vol.7 (2), pp 135-162 at page 146.

<sup>210</sup> Standing Order 2A (5) (e) (i) – (ii).

<sup>211</sup> Article 6(2) of the Hellenic Standing Orders of Parliament.

<sup>212</sup> Section 52(1) of the Constitution and Rule 9 of the Rules of the NA.

<sup>213</sup> Rule 14 of the Rules of the NA.



order to achieve a comprehensive party balance of the Speakership, it is suggested that the Rules of the NA must be amended to provide that the first Chairperson must belong to the majority party in the NA, the second Chairperson must belong to the largest opposition party, and the third Chairperson must be a Member of the second largest opposition party.

The Constitution explains that South Africa is founded upon, *inter alia*, 'a multi-party system of democratic government.'<sup>214</sup> Sadly little has been done to achieve an equal party balance of representatives in the office of the Speaker. In recent times the DA has entrenched itself as the 'official opposition' in the NA, however, to date the party has never had a Member become a presiding officer. In 2014 a candidate belonging to the DA (Nosimo Balindlela) was nominated to run for election as Speaker, however, she was defeated by the ANC's candidate (Baleka Mbete) who received 260 votes out of a possible 400. Since 1994 the office of the Speaker has and continues to be dominated by Members belonging to the ANC. Choudhry explains that 'one of the pathologies of a dominant party democracy is the colonisation of independent institutions meant to check the exercise of political power by the dominant party, enmeshing them in webs of patronage.'<sup>215</sup> Although the Constitution does not consider the office of the Speaker to be an independent institution, it is clear that the ANC has managed to colonise the office to the extent that no other political party has had the opportunity to have a Member serve as an office holder. The Constitution states that the NA must scrutinize and oversee executive action, hence it is crucial for the office of the Speaker to consist of Members from a host of different parties as opposed to only the majority party. It is therefore suggested that the Rules of the NA must be amended in order to facilitate the achievement of a system of multi-party representation, and to strengthen and improve the legitimacy, accountability and independence of the Speaker's office.

---

<sup>214</sup> Section 1(d) of the Constitution.

<sup>215</sup> Choudhry S "'He had a mandate': The South African Constitutional Court and the African National Congress in a dominant party democracy" 2009 2 Constitutional Court Review at page 3.

#### 4.6 Remove Speaker from Motion of No Confidence Proceedings

The Constitution bestows upon all parties of the NA the right to bring a motion of no confidence against the President and/or the Cabinet. Given the language of Rule 102A, it is argued that the Rule is at odds with the Constitution as it allows the Speaker to decide whether the motion should be scheduled or not. Furthermore, the Speaker has the authority to allocate an amount of time for a motion to be debated. As South African history dictates, a Speaker will always belong to the majority party in the NA, and therefore the majority party will always have a substantial amount of authority in deciding whether the motion should be scheduled or not. In South Africa's current political climate it makes no sense for the Speaker to wield such discretion in deciding whether the motion should be scheduled and debated in the NA, due to our Speakers close allegiances to their political party. It could therefore be argued that the Rule needs to be re-examined so as to place less influence within the ambit of the Speaker.

In Canada the process relating to motions of no confidence in the Prime Minister and the Cabinet is not included in any statute or Standing Order of the House. According to Beauchesne 'the determination of the issue of confidence in the government is not a question of procedure or order and does not involve the interpretive responsibilities of the Speaker ... matters of confidence should at all times be clearly subject to political determination.'<sup>216</sup> Therefore, the Speaker has no discretionary role in deciding whether the motion can be debated in the House. The Speaker may only rule as to whether everything is in order and whether the vote has been adopted by the majority of Members or not.<sup>217</sup>

Griffith and Ryle explain that if a Member of the opposition in the United Kingdom's House of Commons brings a motion of no confidence in 'Her Majesty's Government', the government must provide time for the

---

<sup>216</sup> Beauchesne *"Canada Parliament House of Commons, Beauchesne's Rules & Forms of the House of Commons of Canada"* 1989 6th Ed Toronto: Carswell as cited in *"The Confidence Convention under the Canadian Parliamentary System"* (2006) Canadian Study of Parliament Group at page 14.

<sup>217</sup> Desserud D *"The Confidence Convention under the Canadian Parliamentary System"* 2006 Canadian Study of Parliament Group at page 14.

motion to be debated.<sup>218</sup> Furthermore, there are no formal rules regulating the motion of no confidence process, however, the debate of a motion of no confidence will generally precede the normal business of the day.<sup>219</sup> According to Erskine, it is an established convention that the government agrees to allow for a day to discuss the motion brought by the opposition.<sup>220</sup> The aforementioned indicates that the Speaker exercises no authority during motion of no confidence proceedings.

It is submitted that the South African procedure *vis-à-vis* motions of no confidence needs to be reviewed and amended so as to remove the Speaker's discretion from the process. The reliance on the Speaker's discretion has opened the office up to an array of harsh criticism, admittedly, sometimes it is unnecessary and unjustified. Therefore in order to strengthen the independence and legitimacy of the office, it is suggested that the Speaker should not have any authoritative responsibilities during motion of no confidence proceedings. As is the case in Canada, the Speaker is only expected to make a ruling as to whether any basic formalities have been discharged by the opposition party bringing the motion, and whether the House has indeed adopted the motion or not. Furthermore South Africa's NA needs to establish a system, by way of amending the Rules, which obligates the government to provide the NA with a day to discuss the opposition's motion of no confidence – and as is the case in the United Kingdom as seen above.

Alternatively, the Speaker's discretion should be removed from Rule 102A *in toto*. A possible solution may be to substitute the role of the Speaker with that of the Public Protector during the no confidence process. Therefore in the event of a motion of no confidence being brought against the government, the Public Protector would have the discretion to decide whether the motion complies with any formalities. Furthermore, the Public Protector could consult with the relevant actors on the matter and could make

---

<sup>218</sup> *Ibid* at page 484.

<sup>219</sup> Kelly R "Confidence Motions" (2013) Parliament and Constitution Centre SN/PC/2873 at page 4.

<sup>220</sup> Erskine M "Parliamentary Practice" (2004) 23rd Edition Lexis Nexis at pages 329-330 as cited in "Confidence Motions" 2013 Parliament and Constitution Centre SN/PC/2873 at page 4.

a decision as to the time allocation for debating the motion in Parliament. The only role the Speaker would then play in the process is pronouncing whether the vote has indeed been adopted by the NA or not. It is argued that the discretion of an impartial third party would assist in enhancing the legitimacy of the motion of no confidence process, and furthermore it would strengthen the independence of the office of the Speaker as a result of protecting an office holder from unnecessary abuse in the event that the motion does not comply with any formalities and is subsequently dismissed.

## CHAPTER FIVE

### Concluding Remarks - The Importance of Having a Strong Legislature

This paper has attempted to trace the evolution of the office of the Speaker in Westminster by assessing certain traditions, customs and standing orders that have developed over a period of time. Following on from this, I attempted to highlight certain flaws and various issues existing in the South African system. This paper proceeded to analyse several foreign Parliamentary procedures and standing rules in an attempt to identify possible ways to strengthen the independence of the South African office in pursuance of gaining the confidence of the NA toward the Speaker. Whilst conducting research it became apparent that territories such as the United Kingdom, Canada as well as India have admittedly been successful in their attempts to protect and advance their legislatures as a result of enhancing the authority of their respective Speaker's offices. The evidence seems to indicate that the political stability in each of these countries seems to have resulted in, *inter alia* strong functioning economies and an electorate who has responded positively to democracy by turning out in large numbers come voting day. The *status quo* in South Africa unfortunately does not bear the same resemblance to the previously mentioned states. The country is experiencing political instability, an economy on the verge of being downgraded to junk status and an electorate who would rather abstain from voting during general elections.

It is therefore necessary for the South African legislature to develop and enhance the effectiveness and capacity of the NA. Given the increased frequency of questionable or poor decision-making by Members of the executive, one would have expected the NA to seize the opportunity to rise above the executive and flex its oversight muscle. As it stands however it seems as though Parliament's oversight function is declining rather than expanding, which has allowed the executive to get away with illogical decision-making as well as corrupt activity. It is therefore argued that certain measures need to be implemented to enhance the effectiveness of the NA's oversight function so as to achieve a higher level of political accountability which could potentially result in greater political stability. As this paper has

argued, one possible way of achieving stability in the NA would be to strengthen and enhance the independence of the office of the Speaker. By achieving a greater level of political stability, it is argued that South Africa's economy would be provided with more of a stable foundation to grow on a macroeconomic as well as a microeconomic level. In a paper prepared by Aisen and Jose Veiga for the International Monetary Fund, it was established that countries with greater political instability tended to be associated with a lower GDP growth rate per capita.<sup>221</sup> This study seems to suggest that politics seems to influence the economy – this is evident in South Africa. President Jacob Zuma recently fired the Country's Finance Minister which led to a situation whereby the Rand plummeted against most major currencies. It is thus important for state actors to continuously debate and formulate ways to strengthen the capacity of each branch of government so as to maintain stable economic growth.

When assessing the above-mentioned submissions, it is necessary for one to bear in mind that the South African government has a constitutional obligation to take reasonable measures to provide every citizen with a basic education, as well as to ensure that each person has access to adequate housing. Furthermore according to Statistics South Africa's General Household Survey<sup>222</sup>, 44.5% of households in South Africa benefit from government social grants in some way.<sup>223</sup> With an enormous dependency on government, one would expect for them to do everything reasonably possible to enhance and develop our democratic institutions so as to achieve political stability and by extension economic growth. However, little has been done on this front, which has resulted in a stagnant economy and a massive wealth gap between the people of South Africa.

It was established in this paper that the rules of the NA are clearly insufficient as they do not provide adequate measures of strengthening and enhancing the independence of the office of the Speaker – a key parliamentary office. It is submitted that the Courts are not the appropriate

---

<sup>221</sup> Aisen A and Jose Veiga F “*How Does Political Instability Affect Economic Growth?*” 2011 IMF Working Paper WP/11/12 at page 9.

<sup>222</sup> Statistics South Africa “*General household survey*” (2014) Statistical release P0318.

<sup>223</sup> Statistics South Africa “*General household survey*” (2014) Statistical release P0318 at page 32.

engine to effect change to the office of the Speaker. The Constitution contains a provision stating that the NA has the power to determine its own 'internal arrangements, proceedings and procedures.'<sup>224</sup> The text states further that the NA has the authority to formulate its own rules and orders concerning its business.<sup>225</sup> It is therefore unlikely that the South African Courts would display a willingness to overstep the mark by intervening in the internal arrangements of the NA. It is recognised that the Constitution gives the courts the power to make any order that is just and equitable.<sup>226</sup>

However, the courts should try to avoid dictating to the NA which procedures and processes it must develop and implement. To do so would be encroaching on the function of another branch of government and the court's decision may lead to adverse consequences due to the polycentric nature of the decision.

In *Bato Star Fishing (Pty) Ltd v The Minister of Environmental Affairs and Others*<sup>227</sup> O'Regan J explained concisely that:

'In treating the decisions of administrative agencies with the appropriate respect, a court is recognising the proper role of the executive within the Constitution. In doing so a court should be careful not to attribute to itself superior wisdom in relation to matters entrusted to other branches of government. A court should thus give due weight to findings of fact and policy decisions made by those with special expertise and experience in the field.'<sup>228</sup>

It is after all the NA which is in the best position to decide which processes and procedures would be best suited in strengthening and enhancing certain offices and committees within the NA.

It is therefore argued that the NA must develop and implement measures to strengthen itself in any way possible in order to restore some stability and credibility to South Africa's legislative branch of government. It

---

<sup>224</sup> Section 57(1)(a) of the Constitution.

<sup>225</sup> Section 57(1)(b) of the Constitution.

<sup>226</sup> Section 172 (1)(b) of the Constitution.

<sup>227</sup> *Bato Star Fishing (Pty) Ltd v The Minister of Environmental Affairs and Others* 2004 (4) SA 490 (CC).

<sup>228</sup> O'Regan J *supra* at para 48.

would therefore be desirable for the rules committee to assemble a subcommittee, in terms of section 45(1) (c) of the Constitution, to debate on ways to strengthen and enhance the capacity of the office of the Speaker as well as the NA. The subcommittee must be given a mandate to conduct an investigation into possible amendments to the Rules of the NA and ways in which to assist the Speaker to gain the confidence of the National Assembly.

It is vital for the national legislature to be afforded the opportunity to carry out its duties in a timeous and unrestricted manner. The tales of 2015 have proven that South Africa's NA is currently in disarray and is thus in dire need of reformatory processes and procedures so as to strengthen and develop the capacity of an important branch of government. This paper has sought to expose certain issues that have hindered the development of South Africa's NA and certain solutions have been proposed with the intention of initiating a debate surrounding the different ways in which to strengthen the national legislature. It is with hope that the rules committee will take these proposals into consideration and recognise the need to reform aspects of the NA so as to strengthen the capacity of South Africa's legislative branch of government.



## BIBLIOGRAPHY

### Primary Sources

#### Cases

*Brummer, NO v Mvimbi and Others* 13535/2011 (2011) ZAWCHC 385.

*Certification of the Constitution of the Republic of South Africa* 1996 (4) SA 744 (CC).

*Democratic Alliance v Speaker of the National Assembly and Others* (2015) ZAWCHC 60.

*Doctors for Life International v Speaker of the National Assembly* (2006) (12) BCLR 1399 (CC).

*Gauteng Provincial Legislature v Kilian and Others* (2000) ZASCA 161; 2001 (2) SA 68 (SCA).

*Lekota and Another v Speaker, National Assembly and Another* (2012) ZAWCHC 385.

*Mazibuko v Sisulu and Another* (2013) (6) SA 249 (CC).

*National Director of Public Prosecutions v Zuma* 2009 (1) SACR 361 (SCA).

*Primedia Broadcasting, A Division of Primedia (Pty) Ltd and Others v Speaker of the National Assembly and Others* (2015) ZAWCHC 72.

*Speaker of the National Assembly v Patricia De Lille* (1999) ZASCA 50.

*Tlouamma and Others v Mbete, Speaker of the National Assembly of the Parliament of the Republic of South Africa and Another* (2015) ZAWCHC 140.

#### Statutes and Policy Documents

Disruptions during National Assembly proceedings: proposals, 26 June 2015.

GNR.865 of 18 October 2012: Code of Judicial Conduct.

HC 1573 5<sup>th</sup> Report – 2010 elections for positions in the House. House of Common Procedure Committee Dated: 31 October 2011.

Interim Constitution of the Republic of South Africa Act 200 of 1993.

Judicial Service Commission Act 9 of 1994.

Promotion of Bantu Self-governing Act 46 of 1959.

Report of the subcommittee on review of the assembly rules to the rules committee on proposed amendments to the NA Rules: Chapters 1 to 9. Version dated 4 February 2015.

Rule Amendments agreed to by the National Assembly on 30 July 2015.

Rules of the National Assembly. Progress Report on Review of Parliament Rules: report back by sub-committee, 4 February 2015.

South Africa Act Amendment Act 9 of 1956.

Standing Orders of the House of Commons – Public Business 5 May 2015.

Standing Orders of the House of Commons – Consolidated versions as of October 20, 2015.

Republic of South Africa Constitution Act 110 of 1983.

The African National Congress Constitution, as amended and adopted at the 53<sup>rd</sup> National Conference, Mangaung, 2012.

The Coloured Persons Representative Council Amendment Act 52 of 1968.

The Constitution of India.

The Constitution of the Republic of South Africa, 1996.

The Hellenic Standing Orders of Parliament.

The National Assemblies Guide to Procedure 2004, Parliament of the Republic of South Africa.

The Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004

The Separate Representation of Voters Amendment Act 50 of 1968.

The Representation of Natives Act 12 of 1936.

The Rules of the National Assembly of South Africa, 8<sup>th</sup> Edition.

## **Secondary Sources**

### **Books**

Beauchesne "Canada Parliament House of Commons, Beauchesne's Rules & Forms of the House of Commons of Canada" (1989) 6th Ed Toronto: Carswell.

Commons Journal, Vol. VII

Concise Oxford Dictionary, 2015 Oxford University Press.

Currie I & De Waal J “*The New Constitutional and Administrative Law*” (2002) vol 1: Constitutional Law.

Erskine M “Parliamentary Practice” (2004) 23rd edition LexisNexis.

Griffith & Ryle “*Parliament: Functions, Practice and Procedures*” Second edition by Blackburn *et al* (2003) London Sweet and Maxwell.

Hahlo and Khan “*The Union of South Africa: The Development of its Laws and Constitution*” (1960).

Huntington SP “*The Third Wave Democratization in the Late Twentieth Century*” 1991 University of Oklahoma Press.

Laundy P “*The Office of Speaker in the Parliaments of the Commonwealth*” (1984) London: Quiller Press.

Loewenstein K “*British cabinet government*” (1967) London Oxford University Press.

Marais D “*South Africa: constitutional development: a multi-disciplinary approach*” 1989 Johannesburg Southern Book Publishers.

## Journals and Articles

Aisen A and Jose Veiga F “*How Does Political Instability Affect Economic Growth?*” (2011) IMF Working Paper WP/11/12.

Armitage F “*From elite control to democratic competition: Procedural reform and cultural change in UK House of Commons Speakership elections*” (2012) British Politics, Vol.7 (2), pp 135-162

Bach S “*Rules of Procedure for National Assemblies*” (2008) Crawford School of Economics and Government, the Australian National University.

Bergougous G “*Presiding Officers of National Parliamentary Assemblies: A World Comparative Study*” (1997) Inter-Parliamentary Union Geneva.

Choudhry S “*‘He had a mandate’: The South African Constitutional Court and the African National Congress in a dominant party democracy*” (2009) 2 Constitutional Court Review.

Desserud D “*The Confidence Convention under the Canadian Parliamentary System*” (2006) Canadian Study of Parliament Group.

De Vos P “*The Speaker’s dilemma*” 19 September 2014 accessed via the Daily Maverick at <http://www.dailymaverick.co.za/opinionista/2014-09-19-the-speakers-dilemma/#.Vfv-Yvmqqko>.

Fish S “*Stronger Legislatures, Stronger Democracies*” (2006) Journal of Democracy Volume 17.

Giliomee, Hermann, James Myburgh, and Lawrence Schlemmer “Dominant Party Rule, Opposition Politics and Minorities in South Africa.” (2001) In *Opposition and Democracy in South Africa*, edited by Roger Southall, 161–182. London: Frank Cass.

Heitshusen V “*The Speaker of the House: House Officer, Party Leader and Representative*” (2011) Congressional Research Service.

Johnson JK “*The Role of Parliament in Government*” (2005) World Bank Institute, Washington D.C.

Kelly R “*Confidence Motions*” (2013) Parliament and Constitution Centre SN/PC/2873.

Klug H “*Constitution –making, Democracy and the ‘Civilizing’ of Irreconcilable Conflict What Might We Learn from the South African Miracle?*” 2007 Wisconsin International Law Journal Vol. 25, No. 2 pp272 - 299

Lovick D “Impartial but non-partisan: Re-examining the Mythology of the Speakership” (1997) Canadian Parliamentary Review.

MJ Kock “*The impact of political steering on the legislative process*” 2013 LLM Dissertation, University of Pretoria.

Millin SG “*The People of South Africa*” (Date) World Constitutions Illustrated 122- 199.

Mostert BJ “*Parliamentary information sources, systems and services in South Africa and the role of Parliamentary libraries in information provision*” (2004) University of Zululand, South Africa

National Democratic Institute for International Affairs, “*Presiding Officers: Speakers and Presidents of Legislature*” Legislative Research Series Paper 1.

Olivier NJJ “*Race Discrimination in South Africa: An Overview*” 1989 Department of Roman Law and Legal Pluralism, Potchefstroom University.

Robinson WH “*Parliamentary libraries and information services of Asia and the Pacific: papers prepared for the 62nd IFLA Conference, Beijing, China*” (1997).

Seedat et al “The South African Parliament in 2015” (2015) Council for the Advancement of the South African Constitution.

Southall R “*The Dominant Party Debate in South Africa*” (2005) Afrika Spectrum 39, Institut fur Afrika-Kunde, Hamburg pp 61 – 82.

Southall R “*Opposition and Democracy in South Africa*” (2001) London Frank Cass: 161-182.

Statistics South Africa “*General household survey*” (2014) Statistical release P0318.

Steytler N “*Parliamentary democracy- the anti-defection clause*” (1997) Law Democracy and Development pp 221-231.

Stott N “*From the SADF to the SANDF: Safeguarding South Africa for a better life for all?*” (2002) Violence and Transition Series, Vol. 7.

Venter A “*Historical overview: the development of modern South African Politics*” (1989) South African Government and Politics: An Introduction to Its Institutions, Processes and Politics pp 21-44 Johannesburg Southern Book Publishers.

## Websites

<https://www.da.org.za/2014/09/opposition-tables-motion-confidence-baleka-mbete>.

<http://www.dailymaverick.co.za/opinionista/2014-09-19-the-speakers-dilemma/#.Vfv-Yvmqqko>.

<https://pmg.org.za/committee-meeting/21506/>.

<http://www.politicsweb.co.za/news-and-analysis/why-was-max-sisulu-summoned-to-luthuli-house--lind>.